DE
Laudibus Legum Angliæ

Written by

Sir JOHN FORTESCUE

Lord *Ch. Justice*, and after Lord *Chancellor* to K. *Henry* vj.

Hereto are Added the two *Sums* of

Sir RALPH *de* HENGHAM L.

Ch. Justice to K. *Edward* I. commonly call'd Hengham *Magna*, & Hengham *Parva*.

WITH

Notes both on *Fortescue* and *Hengham*,

By that Famous and Learned Antiquarie

JOHN SELDEN Esq.

LONDON,
Printed by John Streater, Eliz. Fleiher and H. Twyford, Assignes of Rich. Atkyns and Edward Atkyns, Esquires.

And are to be sold by *G. Sawbridge*, *J. Place*, *J. Bellinger*, *Wil. Place*, *T. Basset*, *Rob. Pawlet*, *Christ. Wilkinson*, *Tho. Dring*, *Wil. Jacob*, *Ch. Harper*, *J. Leigh*, *J. Amery*, *J. Poole*, Booksellers in *Fleet-street* and *Holborne*, Anno Dom. M DC LXXII.

Cum Gratia & Privilegio Regiæ Majestatis.

101,3.94

10/24/27
Budget I.
Fin.
Geo. Harding
$ 5.11
Laprade
347.04
F738

To the Reader.

THis Author, Sir John Forteſcue, was Chief Juſtice to Hen. VI. as the Records of the latter half of his Reign every where ſhew; and that he might Statum ſuum decentiùs manuteneré, in Part. 1. Rot. par. 20 Hen. 6. membran. 10. an annuity of CLXXX marks is given him out of the Hamper, Cxvj. s. xj. d. q. Percipiendum ſingulis annis ad feſtum Pentecoſtes pro una roba & furrura pro eadem, erga idem feſtum, and Lxvj. s. vj. d. ſingulis annis ad feſtum Pentecoſtes pro una roba & linura pro eadem, erga idem feſtum. He is call'd his Chancellour alſo. In this book, his title, given by himſelf, is Cancellarius Angliæ, and in his Declaration, or rather Retractation, of that he had written againſt the title of the houſe of York, himſelf puts in the mouth of a friend of his expoſtulating with him, theſe words, Conſidering that ye were the chief Chancellour to the ſaid late

101, 3. 94

late King. *It seems, being with* Henry VI. *driven into* Scotland, *he was made his Chancellor, the memory whereof (as it would hardly be otherwise) wants in the Patent-Rolls. His Books which I have seen are three. This now newly published, the* Difference *between* Dominium Regale *and* Dominium Politicum *and* regale, *and that* Declaration *touching the title of the Crown. Neither of the two last were ever published, but they remain* Mss. *in divers hands. As touching his descent: by good testimony, he is made son to* Henry Forteſcue *son of Sir* John Forteſcue *Knight,* (Captain *of* Meaux, *and Governour of* Brie *in* France, *under* Hen. V.) *who was second son of* William Forteſcue *of* Wimeſton *in* Devonſhire *Esquire. Because he was Englished by him that first published him, this, part of the title, and the notes on him are in English. What he hath of the* Commendations of the Law of England, *must not be expected to be so copious, as if all, that might thereof have been said, had been hunted for by him to be here congested. He shewes that he instructed the young Prince, and only in some such few Occurrences of our trials and positions, as might be, without difficultie, apprehended by a minde so tender and strange to*

the

the Courts of Judicial contention. Neither give
he enough to satisfie the malice, or the ignorance
of some foul-mouth'd declaimers against it, who
for the most part (if they descend to particulars,
and make a case to find fault withal) either ri-
diculously compact things incompatible, just
like the Sycophant in that Geographie of his in
Trinummus,

Omnium primum in Pontum advecti ad A-
rabiam terram sumus,
And thence
Ad Caput amnis quod de Cœlo
exoritur sub solio Jovis,

or else, measuring an established and universal
proceeding or position only by their own damage,
never coming near apprehension of the true rea-
son, raile at it, with like judgment, as the Pa-
rasite in a lost Comedy of Plautus, *doth at the*
certain course of Sun-Dials, being thence only
moved, because the shadow went not so fast as his
stomach, which when he was a Child was the
only Dial, and that

—Iste monebat esse, nisi quum nihil erat
Nunc etiam quod est non est,
nisi SOLI lubet.

But no place is here for more of this, and nos
hac scabie tenemus ungues: *To this Edi-*

tion are added the Sums of Sir Ralph de Hengham, Chief Justice to Edw. 1. never till now printed; in whom although most of the learning be touching Essoins, Defaults, and course of proceedings in such actions which are in seldom use at this day, yet divers things occurr, both specially observable in what he hath touching those proceedings, (which a Professor of the Law cannot but wish to know) as also he often otherwise gives light to the Customs or Law of his time, whence, as through an Ancestor of the right line, we must deduct that of the present. Of him in the Preface to the Reader, before him, enough is said, and of his Summes. Of his language, which with the rest of our Common Law Latin is accused of Barbarism, somewhat is there brought in excuse. That preface was thought fit to speak Latin, the Author of the Book himself being publisht only in that tongue. But the Notes are English. For what other readers then English are to be expected? Many an Ignorant had been deterred by pure Latin, and to have used Barbarism in them would have turn'd the stomach of a Polite Reader. Though divers Copies of Hengham were examin'd in preparing this, yet could not a perfect one be extracted from them all. At one

helps

help't another, choice was so made that this might be the best; which yet is not without many faulty passages. So faithfully it is publisht from the Mss. that even the false language, which by consent of old Copies appear'd not to be the transcribers, but proceeded from the ages either negligence or ignorance, is religiously retain'd, so should the lost monuments of ancient Writers be given to the publick; so should we abstain from wronging their Manes. Some places, that the erring hands of such as anciently Copied him corrupted, are by way (amongst other observations collected in the heat of the Press) noted, and either by conjecture restored, explained, or marked with asterisks, left to better Judgments. The varying of Letters in the print, is only to lead the Readers eye the sooner to what he may look after. Farewell.

From the Inner Temple,
Septemb. XXIV.
CIↃ.DC.XVI.

He that first publish't *Fortescue*, added the Epistle and Dedication following.

Pio Lectori.

ISTius non minus pii, quam eruditi opusculi exemplar, nactus, quum antiquitatem venerandam, una cum eruditione ac pietate conjunxerim: Non potui optime lector, aut patriæ tam ingratus, aut antiquitatis tam inofficiosus cultor esse, ut te illius lectione diutius fraudarem. Continet enim in se (ut cætera taceam) politicarum, & civilium nostræ Angliæ legum, quibus præclara & florentissima hæc respub-

respublica sub illustrissimo & nunquam satis laudato principe nostro rege Henrico sexto, ejusque progenitoribus regibus Angliæ hactenus felicissime fuerit erecta, instituta & gubernata, doctissimum encomion. Unde eadem nostras leges non solum Romanorum Cæsarum, sed & omnium aliarum nationum constitutiones, multis parasangis, prudentia, justitia, & equitate, præcellere, facile perspicias. Eme ergo, lege, & fruere, ac labores nostros boni consule.

Vale.

To the Right Worſhipful *JOHN WALSHE* Eſquire, one of the Queen her learned Juſticers of her Highneſſe Court of Common Pleas, *Robert Mulcaſter* wiſheth life and health.

IT hapned me of late (Right Worſhipfull Sir) to light upon this little Treatiſe, which I incontinent deſired to run over, becauſe it ſeemed to diſcourſe upon ſome points of the Lawes of our Countrey, whereof I my ſelf then was and am now a Student. When I had over-runne it, my deſire to reade it, became nothing countervailable with the gladneſs that I had read it, for my deſire to read it came upon hope, to find ſome profitable leſſons for my ſtudie, but my gladneſs after reading ſprang of the excellency of the argument, whereon I did not dream, neither to find ſo rich a treaſure in ſo ſimple a habit. And becauſe

becauſe I wiſhed all men to have part of my delight, me thought it good to tranſlate it into Engliſh forth of Latin, in which tongue it was firſt written. The Author of the book was one Maſter *Forteſcue* Knight, Serjeant at the Law, and for his skill and vertues preferred by King *Henry* the ſixth, to be Chancellor of this Realm. The entry of the book it ſelf ſheweth, where, and upon what occaſion, it was written. It was written in *Berry* in *France*, where Prince *Edward*, ſonne to *Henry* the ſixth, afterward ſlaine at *Tewkeſburie* by *Edward* the fourth, did then remaine with his Mother Queen *Margaret* in the Hoaſe of *Renate* her Father, Duke of *Angew* and King of *Sicilie*, during the time that *Edward* the fourth reigned in the Realm, and *Henry* the ſixth was fled into *Scotland*. The occaſion was this: The Chancellor being fled into *France* with the young Prince, and perceiving his delight to be all bent to Chivalrie as a thing of greateſt need, conſidering he meant by force the reſtitution of his Father, and thereby his own, to the Kingdome of *England*, took occaſion (for that his hope was to ſee the Prince reigne here).

here) to move him to a diviſion of his affairs, and as he armed himſelf againſt the enemy, ſo to adorne himſelf againſt his being King, with skill of Laws, which do preſerve each ſtate ſo in peace, that it may, if need be, warre; and ſo guard it in warre, that it may have peace in it. The argument is this, that the skill of the Country Laws is needfull for the Prince, although not ſo deep as for purpoſed profeſſours, yet ſo full as to their honor may and ought to fall in Princes. And for that the Prince ſhould think the thing to be a princely knowledge, he taketh occaſion (by comparing the Government of this Realm with others, and the laws of this Land with the Civil, with whom it is of all men lightly compared, and the beterneſs of points wherein they both travel, and proviſions by the one wiſelier foreſeen then by the other) to prove the ſingularitie of this ſtate which it behooved the Prince to learn, ſeeing he was like to ſucceed his Father, and to underſtand the Laws, which maketh the ſtate to be ſingular. The particulars I refer to the book, whereof thus much I do, and no leſs could

could well say, Why I did choose your Worship to be Protector of my labours, I shall not need tediously to touch, it shall be sufficient to say, that in choice of many, I picked you alone, not doubting your liking in allowing, seeing mine election in dedicating: And so committing to the Almightie the good preservation of your worship, I humbly take my leave.

(***)

Rob. Mulcaster.

DUring the cruel rage of the late mortall warres within the realm of England, when the most vertuous and godly King Henry the sixth, with Queene Margaret his wife, the Kings daughter of Jerusalem and Sicile, & their only sonne Edward Prince of Wales, were forced to fly the land: and the King himself afterward in the same civil tumult falling into the bloody hands of his deadly enemies his own Subiects, was of them committed to prisō, where he a long time remained in strait captivity, the queene & the prince her son thus banished out of their Country, making their abode in the Dutchy of Berry, a dominion of the foresaid King of Jerusalem.

SÆviente dudum in regno Angliæ nefandissima rabie illa, qua *piissimus* ibidem Rex *Henricus sextus*, cum *Margareta* Regina consorte sua, filia Regis *Jerusalem & Siciliæ*, ac eorum unigenito *Edwardo* principe *Walliæ*, inde propulsi sunt: sub qua & demum Rex ipse Henric' a subditis suis deprehensus, carceris diutinum passus est horrorem, dum regina ipsa cum sobole, patria sic extorris, in Ducatu *Berre* n. prædicti regis Jerusalem dominio, morabantur.

Prin-

Princeps ille, mox ut factus eſt adultus, militari totum ſe contulit diſciplinæ, & ſæpe ferocibus & quaſi indomitis inſedens caballis, eos calcaribus urgens, quandoque lancea, quandoq; mucrone, aliis quoque inſtrumentis bellicis, ſodales ſuos, juvenes ſibi ſervientes, bellantium more invadere ferireque, juxta Martis gymnaſii rudimenta delectabatur. Quod cernens miles quidam grandævus, prædicti regis Angliæ Cancellarius, qui etiam ibidem ſub hac clade exulabat: principem ſic affatur.

The Prince ſhortly after growing to mans ſtate, applied himſelf wholly to the feates of armes, much delighting to ride upon wild & unbroken horſes, not ſparing with ſpurs to breake their fierceneſs. He practiſed alſo ſometimes with the pike, ſometimes with the ſword, & other warlike weapons after the manner and guiſe of warriors according to the uſe of martiall diſcipline, to aſſaile and ſtrike his companions, I mean the young men that attended upon his perſon. Which thing when a certain ancient Knight, being Chancellor to the foreſaid King of England ſaw, who alſo in the miſerable time did there remaine in exile, he ſpake thus to the Prince.

Firſt

Chap. 1. *First he moveth the Prince to the knowledge of the Law.*

YOur singular towardnes, most gracious Prince, maketh me right glad, when I behold how earnestly you do embrace martial feats: For it is convenient for your grace to be thus delighted, not only for that you are a soldier, but much rather for that you shall be a King. For it is the office & duty of a King to fight the battailes of his people, & also rightly to judge them, as in the viii. chapter of the first book of Kings you are plainly taught. Wherefore I would wish your grace to be with an earnest zeal given to the study of the laws, as you are to the knowledge of armes,

GAudeo vere, *serenissime princeps*, super nobilissima indole tua: videns quanta aviditate militares tu amplecteris actus; convenit namq; tibi taliter delectari, nedum quia miles es, sed amplius quia Rex futurus es. *Regis nempe officium pugnare est bella populi sui, & eos rectissime judicare*, ut primo regum capitul. viii. clarissime tu doceris. Quare ut armorum, utinam & legum studiis, simili zelo te deditum contemplarer,

cum *ut armis bella, ita legibus judicia, peragantur.* Quod *Juſtinianus Auguſtus*, æquiſſima librans mente, in initio prohemii libri ſui inſtitutionum, ait, *Imperatoriam Majeſtatem non ſolum armis decoratam, ſed & legibus oportet eſſe armatam*, ut utrumque tempus bellorum & pacis recte poſſit gubernare. Tamen ut ad legum ſtudia fervide tu anheles, maximus legiſlator ille *Moyſes*, olim Synagogæ dux, multo fortius Cæſare te invitat, dum regibus

becauſe that like as wars by force of Chivalry are ended, even ſo judgements by the Laws are determined. Which thing Juſtinian the Emperour well & wiſely & adviſedly pondering, in the beginning of the preface of his book, ſaith thus: It behoveth the Imperial majeſty not only to be garded with armes, but alſo to be armed with Laws, to the end that he may be able rightly to execute the government of both times aſwell of war as of peace. Howbeit for your moſt earneſt endeavor to the ſtudy of the Law the exhortation of the chiefeſt lawmaker *Moſes*, ſometime Captain of the Synagogue, ought to be of much more force with you, then the word

wordes of Justinian; whereas in the xvii. Chapter of the book of Deuteronomy he doth by the authority of God straitly charge the Kings of Israel to be leaders of the law all the dayes of their life, saying thus: When the King shall sit upon the Princely seat of his Kingdome, he shall write him out this Law in a book, taking the copy thereof of the Priests the Levites: and he shall have it with him, and he shall read it all the dayes of his life, that he may learn to fear the Lord his God, and to keep his Commandements and Ordinances written in this Lawe, And Helynandus expounding the same, saith thus: Israel divini auctoritate ipse præcipiat, eorum leges legere omnibus diebus vitæ suæ, sic dicens: *Postquam sederit Rex in solio regni sui describet sibi Deuteronomii Leges in volumine; accipiens exemplar a sacerdotibus Leviticæ tribus, & habebit secum, leget-que illud omnibus diebus vitæ suæ, ut discat timere Dominum Deum suum, & custodire verba & ceremonias ejus quæ in lege scripta sunt* Deuteron. capit. decimo septimo, quod exponens *Helynandus* dicit:

Princeps ergo non debet juris ignarus eſſe, nec pretextu militiæ legem permittitur ignorare. Et poſt pauca, a ſacerdotibus Leviticæ tribus aſſumere jubetur exemplar legis, id eſt a viris Catholicis & literatis, Hæc ille: Liber quippe Deuteron. eſt liber legum, quibus Reges Iſrael ſubditum ſibi populum regere tenebantur. Hunc librum legere jubet *Moyſes* Reges, ut diſcant timere Deum, & cuſtodire mandata ejus, quæ lege ſcripta ſunt.

A Prince therefore muſt not be ignorant of the law, neither is it tolerable that he under the pretence of warfare ſhould be unskilfull in the Law. And a little after hee is commanded, ſaith he, to receive the coppy of the law of the prieſts the Levites, that is to ſay, of Catholick and learned men, Thus much hee: For the book of Deuteronomy is the book of the laws, wherewith the Kings of Iſrael were bound to rule and governe their ſubiects. This book doth Moyſes command Kings to read, that they may learn to fear GOD, and keep his Commandments, which are written in the Law.

Behold

Behold the effect of the law is to fear God, whereunto man cannot attain, unleſſe hee firſt know the will of God, which is written in the Law. For the principall point of all ſervice is to know the will and pleaſure of the lord or maſter to whom ſervice is due. Howbeit the law maker, Moyſes, firſt in this charge mentioneth the effect of the Law, that is the feat of God, and next he allureth us to the keeping of the cauſe thereof, that is to ſay, of Gods commandements. For in the mind and intent of the exhorter, the effect goeth before the cauſe. But what fear is this, which the lawes doe propone to the obſervers thereof?

Ecce *timere Deum effectus eſt legis*, quem non conſequi valet homo, niſi prius ſciat voluntatem Dei, quæ in lege ſcripta eſt. Nam principium omnis famulatus, eſt ſcire voluntatem domini cui ſervitur. Legis tamen lator *Moyſes*, primo in hoc edicto effectum legis videlicet timorem Dei commemorat: deinde ad cuſtodiam cauſæ ejus, videlicet, mandatorum dei ipſe invitat. Nam effectus prior eſt quam cauſa, in animo exhortantis. Sed quis eſt timor iſte, quem promittunt leges obſervatoribus ſuis?

Verè non eſt timor ille, de quo ſcribitur: Quod perfecta charitas foras mittit timorem. Timor tamen ille, licet ſervilis, ſæpe ad legendum leges reges concitat, ſed non eſt ipſe proles legis. Timor vero, de quo hic loquitur Moyſes, quem & pariunt leges, eſt ille de quo dicit propheta. *Timor Domini ſanctus permanet in ſeculum ſeculi.* Hic filialis eſt & non novit pœnam, ut ille qui per charitatem expellitur.

Surely it is not that fear whereof it is written that, perfect charity or love expelleth fear. Yet this ſame fear, though it be bond and ſervile, oftentimes provoketh kings to the reading of the Laws: but it proceedeth not out of the law. But that fear whereof Moſes here ſpeaketh, which alſo proceedeth out of the Laws, is the ſelf ſame fear, that the Prophet ſpeaketh of, ſaying: The fear of the Lord is holy, and endureth for ever and ever. This is ſuch a loving fear as naturally children bear to their dear parents, commonly termed the reverence of the child towards his parents. Whereunto there is no puniſhment due as a thing wrought by love.

For

For this fear proceedeth out of the Laws, which teach to doe the will of God, so that it deserveth no punishment. But the glory of the Lord is upon them that fear him, and he doth glorifie them. Yea this fear is even that same fear, whereof Job, after that he had diversly searched for wisdome, saith thus: Behold the fear of the Lord is perfect wisdome, and to forsake evill is understanding. That the forsaking of evill is the understanding of the fear of God, this do the Laws teach, whereby it followeth that the same fear proceedeth out of them.

Nam iste à legibus proficiscitur, quæ docent facere voluntatem Dei, quo ipse pœnam non meretur. Sed gloria domini est super metuentes eum, quos & ipse glorificat. Timor autem iste, timor ille est, de quo *Job*, postquam multifarie sapientiam investigarat, sic ait: *Ecce timor domini, ipsa est sapientia, & recedere à malo intelligentia.* Job ca. 28. Recedere à malo, quod intelligentia timoris dei est; leges docent, quo & timorem hunc ipsæ parturiant.

Ch. 2. *The Princes reply to the Chancellors motion.*

HÆc ut audivit *princeps*, erecto in senem vultu, sic locutus est. Scio, Cancellarie, quod liber *Deut.* quem tu commemoras, sacræ scripturæ volumen est; leges quoque & ceremoniæ in eo conscriptæ, etiam sacræ sunt, a domino editæ, & per *Moysen* promulgatæ: quare eas legere sanctæ contemplationis dulcedo est. Sed lex, ad cujus scientiam me invitas, humana est, ab hominibus edita, & tractans terrena: quæ, licet *Moyses* ad Deu. lecturam Reges Israel astrinxerit, eum per hoc reges a

THe Prince hearing this, and stedfastly beholding the old man, spake thus to him. I know, good Chancellor, that the book of Deuteronomy, whereof you speak, is a book of holy Scripture: The laws also and ordinances therein contained are holy, of the Lords making, and published by Moses: Wherefore the reading of them is a pleasant act of holy contemplation. But that Law, to the knowledge whereof you counsel me, is humane, made by men, and intreating of worldly matters: wherefore though Moyses bind the Kings of Israel to the reading of Gods Law, yet that thereby he

forceth

forceth all other Kings to doe the like in their own lawes, that standeth by no good reason, seeing that of both the readings the cause is not like.

lios, ad consimiliter faciendum in suis legibus, concitasse, omnem effugit rationem, cum utriusque lecturæ non sit eadem causa.

Ch. 3. *Here the Chancellor fortifieth his assertion.*

I Perceive (quoth the Chancellor) by your answer, most worthy Prince, how earnestly you have considered & weighed the quality of my exhortation: So that hereby you doe much encourage me, both more plainly, more largely, and also more deeply to discourse the same. Wherefore you shall understand, that not onely Gods Lawes, but also mans, are holy, for so much as the Law is defined by

AT Cancellarius. Scio (inquit) per hæc quæ jam dicis, princeps clarissime, quanta advertentia, exhortationis meæ tu ponderas qualitatem, quo me non infimè concitas super inceptis nedum clarius, sed & profundiùs quodammodo tecũ disceptare: Scire igitur te volo, quod non solum Deur. leges, sed & omnes leges humanæ sa-

crx

cræ ſunt, quo lex ſub his verbis definitur: Lex eſt ſanctio ſancta jubens honeſta, & prohibens contraria, ſanctum etenim eſſe oportet, quod eſſe ſanctum definitum eſt. Jus etiam deſcribi perhibetur, quod illud eſt ars boni & æqui, cujus merito quis nos Sacerdotes appellat. *Sacerdos* enim, quaſi ſacra dans, vel ſacra docens, per etymologiam dicitur, quia ut dicunt, jura, leges ſacræ ſunt quo eas miniſtrantes & docentes, Sacerdotes appellantur. Adeo etiam ſunt omnes leges editæ, quæ ab homine promulgantur. Nam cum

theſe wozds: The law is a holy ſanction oz decree, commanding things that be honeſt, and fozbidding the contraries: Now the thing muſt needs be holy which by definition is determined to be holy. Right alſo, by deſcription is called the Art of that which is good and ſtreight, ſo that in this reſpect a man may well call us *Sacerdotes*, that is to ſay, gibers oz teachers of holy things (foz ſo by interpzetation doth *ſacerdos* ſignifie.) Fozſomuch then as the laws are holy, it followeth that the miniſters & ſetters fozth of them may right well be called *Sacerdotes*, that is gibers and teachers of holy things. Furthermoze all laws publiſhed by men have alſo their authozity from God.

Foz,

For, as the Apostle saith, all power is from the Lord God. Wherefore the laws, that are made by man, which thereunto hath received power from the Lord, are also ordained of God, as also appeareth by this saying of the Author of all causes: Whatsoever the second cause doth, the same doth the first cause by a higher and more excellent mean. Wherefore Josaphat the king of Juda saith to his Judges: The judgements, which ye execute, are the judgements of God, in the nineteenth Chapter of the second book of Chronicles. Whereby you are taught, that to learn Laws, though they be Mans laws, is to learn holy laws and the ordinances of God: so that the

dicat Apostolus, quod omnis potestas a Domino Deo est, leges ab homine conditæ, qui ad hoc a Domino recipit potestatem, etiam à Deo constituuntur, dicente *Auctore causarum: Quicquid fecit causa secunda, facit & causa prima, altiori & nobiliori modo.* Quare *Josaphat* Rex *Judæ* ait Judicibus suis. *Judicia, quæ vos profertis, judicia Dei sunt,* secundo Paralipo. xix. Capitul. Ex quibus erudiris, quod leges, licet humanas, addiscere, est addiscere leges sacras & editiones dei, quo earum

studium

ſtudium non vacat a dulcedine conſolationis ſanctæ. Nec tamen, ut tu conjicis, dulcedo hujuſmodi cauſa fuit, cur *Moyſes* reges Iſrael Deut. legere præceperat. Nam cauſa hæc, non plus reges quam plebeios, ad ejus lecturam provocat, nec plus Deut. librum, quam alios Pentateuchi libros legere, pulſat cauſa iſta, cum non minus libri illi, quam Deut. ſacris abundant cariſmatibus, in quibus meditari profanctum eſt. Quare non aliam fuiſſe cauſam mandati hujus, quam quia in Deut. plus quam in aliis libris veteris teſtamenti, leges inſe-

ſtudy of them is not without a pleaſant ſweetneſs of holy conſolation. And yet ſuch ſweet pleaſure was not the cauſe, as you ſuppoſe, wherefore Moyſes commanded the Kings of Iſrael to read the laws of Deut. For this cauſe moveth not Kings, no more then the common ſort to the reading of it, nor to the Books of Deut. more then of any of the other books of Moyſes, in which, aſwel as in the book of Deut. is plentifull ſtore of godly leſſons, holy inſtructions, wherein to be devoutely occupied is a holy thing: wherefore that there was none other cauſe of this commandement, then for that the laws, whereby the King of Iſrael is bound to rule his people, are more preciſely

contained

contained in the Book of Deuteronomy then in the other books of the old testament, the circumstances of the same commandement do manifestly inform us. For which cause you ought, most worthie Prince, no lesse then the kings of Israel, to be moved and provoked, to be a diligent trabailer in the study of those laws, whereby hereafter you shall rule your people. For that which was spoken to the king of Israel, must be understood to be figuratively spoken to every king having dominion over godly people. And have I not then well & wholsomly propounded unto you the comandment given to the kings of Israel, concerning the learning of their law?

runtur, quibus rex Israel populum regere obnoxius est ejusdem mandati circūstantiæ manifeste nos informant. Quo & te, princeps, eadem causa, non minus, quam reges Israel exhortatur, ut legum, quibus populum in futurum reges, tu sis solers indagator. Nam, quod regi Israel dictum est, omni Regi populi videntis deum typice dictum fuisse intelligendum est. An tunc non convenienter uti iterque proposui tibi mandatum Regibus Israel latum, de eorum lege addiscenda?

Dum nedū ejus exem-

emplum, ſed & ejus auctoritas figuralis, te erudivit & obligavit, ad conſimiliter faciendum de legibus regni, quod annuente Domino hæreditaturus es.

Forasmuch as not onely his example, but also his like authority, hath taught you, and bound you to the like doing in the Laws of the kingdom, which God willing you shall inherite.

Chap. 4. *Here the Chancellor proveth that a Prince by the lawes may be made happy and blessed.*

NOn ſolũ ut deũ timeas, quo & ſapiens eris, *princeps colendiſſime*, vocant te leges, cum prophetа dicente, *Venite filii, audite me, timorem domini docebo vos*: Sed etiã ut felicitatem, beatitudinemq; (prout in hac vita nãciſci poteris) adipiſcaris, ipſæ leges ad earum diſciplinarum te invitant. Philoſophi namque

NOt only to the intent you ſhould fear God and ſo become wiſe, doe the Laws with the Prophet call you, ſaying, Come Children; hear me, I will teach you the fear of the Lord: but alſo that you may aſpire unto felicity and bleſſednesſe (as far forth as in this life they may be attained) do the Laws will you, moſt gracious Prince, to bee ſtudious of them. For all the Philoſophers, which

which have so diversly reasoned of felicity, have all agreed together in this one point, that felicity or blessednes is the end of all mens desire, and therefore they call it chief goodnes. How bee it the Peripatetikes placed it in vertue, the Stoicks in Honesty, and the Epicures in Pleasure. But seeing the Stoicks designed Honesty, to bee that, which is well and laudably done with vertue, and the Epicures held nothing to be pleasant without vertue, therefore all those sects, as saith Leonard Aretine, in his Introduction to Mozall Philosophy, agreed in this, that it is onely vertue that causeth felicity. Wherefore Aristotle also in the 7. book of his Polit-

omnes, qui de felicitate tam varie disputabãt, in hoc uno convenerunt, *viz.* quod felicitas sive beatitudo finis est omnis humani appetitus, quare & ipsã summum bonũ appellãt. *Peripatetici* tum constituebãt eam in virtute: *Stoici* in honesto: & *Epicuri* in voluptate. Sed quia *Stoici* honestum definiebant esse quod bene fit & laudabiliter ex virtute, & *Epicuri* asserebant nihil esse voluptuosum sine virtute, Omnes sectæ illæ, ut dicit *Leonardus Aretin'* Isagogico moralis disciplinæ, in hoc concordaverunt, quod sola virtus est, quæ felicitatem operatur.

Quo

Quo & Philoſophus (in 7. polit. felicitatem definiens) dicit, quod ipſa eſt perfectus uſus virtutũ. His jam præſuppoſitis, conſiderare te volo etiam ea quæ ſequentur. Leges humanæ non aliud ſunt quam regulæ, quibus perfecte juſtitia edocetur. Juſtitia vero, quam leges revelant, non eſt illa, quæ commutativa vel diſtributativa vocatur, ſeu alia quævis particularis virtus, ſed eſt virtus perfecta, quæ juſtitiæ legalis nomine deſignatur. Quam *Leonardus* prædictus ideo dicit eſſe perfectam, quia omne vitium ipſa eliminat, & omnem virtutem ip-

tiques defining Felicity ſaith, that it is the perfect uſe of Vertues. Thus much being now præſuppoſed, I would have you to conſider theſe things alſo that follow. Mans laws are nothing elſe but certain rules, whereby Juſtice is perfectly taught. But that Juſtice, which the Lawes doe ſhew, is not the ſame that is called Commutative or diſtributive, or any other particular vertue, but it is a perfect vertue, expreſſed by the name of Juſtice legal. Which the foreſaid Leonard doth therefore affirm to be perfect, becauſe it excludeth all vice, and teacheth all vertue: For which cauſe alſo it is worthily called by the name of all vertue:

Whereof

Whereof Homer saith, and likewise Aristotle in the fifth Book of Morall Philosophie, that it is the chiefest of all vertues, and that neither Lucifer nor Hesperus are so bright and beaming as it is. Moreover this justice is the thing whereupon all Princely care dependeth and resteth, without the which the King can neither rightly judge, nor yet duly fight. But this being once obtained and perfectly kept, then all the whole duty required in a King is justly performed. Now then, seeing that the perfect use of vertues is felicity, and that Justice used amongst men, which cannot be attained unto, nor learned but by the Law,

sa docet: quo & omnis virtus ipsa merito nuncupatur. De qua Homerus dicit, similiter & philosophus quinto Ethicorum, Quod ipsa est præclarissima virtutũ, &, nec Lucifer, nec Hesperus, ut illa, est admirabilis: Justitia vero hæc, subjectum est omnis regalis curæ, quod sine illa Rex juste non judicat, nec recte pugnare potest. Illa vero adepta, perfectéq; servata, æquissimè peragitur omne officiũ Regis. Unde cum perfectus usus virtutum sit fœlicitas, & Justitia humana, quæ non nisi per legem perfecte nanciscitur,

C

citur, aut docetur, nedum ſit virtutum effectus, ſed & omnis virtus: Sequitur, quòd juſtitia fruens fœlix per legem eſt, quo & per eam ipſe ſit beatus, cum idem ſit beatitudo & fœlicitas in hac fugaci vita, cujus & per juſtitiam ipſe ſummum habet bonum. Tamen non niſi per gratiam lex poterit iſta operari, neque legem aut virtutem ſine gratia tu addiſcere poteris, vel appetere. Cum, ut dicit Periſſ. in libro ſuo de *Cur Deus homo*, virtus hominis appetitiva interior,

is not only the effect of vertues, but is all vertue it ſelf: hereof it followeth, that the practiſer of Juſtice is by the law happie, and ſo thereby he is made bleſſed, forſomuch as bleſſedneſs or happineſs and felicitie are both one in this ſhort and tranſitorie life, of the which life through Juſtice he enjoyeth the chiefe and principal goodneſs. And yet the Law is not able to performe theſe things without the aſſiſtance of grace, without the which alſo you cannot learn nor covet either Law or vertue. For, as ſaith Periſſ. in his book entituled *Cur Deus homo*, the inward vertue of man, wherein his deſiring is placed, is ſo through

through original ſin defaced & corrupt, that it eſteemeth vitious works for pleaſant, & vertuous works for unpleaſant. Wherefore, in that ſome men apply and endeavour themſelves to the love & following of vertues, it proceedeth of the bountiful goodneſs of God, & not of the power of man. Is there not then ſpecial cauſe why the laws, which being prevented, & accompanied with grace, do perform all the premiſes, ſhould with all diligent travel be learned? Seeing that who ſo hath perfectly attained thereunto, the ſame ſhall enjoy felicity, the end & perfomance, as the Philoſophers ſay, of mans deſire, by means whereof he ſhall in this life be bleſſed, in ſ

per peccatum originale ita viciata eſt, ut ſibi viciorum ſuavia, & virtutum aſpera opera ſapiant. Quare, quod aliqui ad amorem ſectationémque virtutis ſe conferunt, divinæ bonitatis beneficium eſt, & non humanæ virtutis. Num tunc leges quæ, preveniente & comitante gratia, omnia premiſſa operãtur, toto conamine addiſcendæ ſunt? dum felicitatẽ, quæ, ſecundum Philoſophos, eſt hic finis & complementum humani deſiderij, earum apprehenſor obtinebit, quo & beatus ille erit in hac vita,

ejus poſſidens ſummum bonum. Verè, etſi non hæc te moveant, qui regnum recturus es, movebunt te & arctabunt ad diſciplinatum legis Prophetæ verba dicentis: *Erudimini, qui judicatis terram:* non enim ad eruditionem artis factivæ, aut mechanicæ, hic movet Propheta: Cum non dicat, Erudimini, qui colitis terram, nec ad eruditionem ſcientiæ tantum theoricæ, quamvis opportuna fuerit incolis terræ: quia generaliter non dicit, erudimini qui inhabitatis terram,

he now poſſeſſeth the chief goodneſs thereof. Doubtleſs if theſe things move you not, which ſhall have the rule and government of a kingdome, yet the words of the Prophet ſhall move you, yea, and force you to the ſtudie of the Law, which words be theſe: Be ye learned you that are Judges of the Earth: Here the Prophet exhorteth not to the learning of a baſe art or a handicraft, for he ſaith not, Be ye learned you that are the inhabiters of the Earth, neither doth he counſel to the learning of knowledge ſpeculative, though it be not unneceſſary for the inhabiters upon the earth: For he ſayeth not generally, Be ye learned you that dwel upon the earth, but

but by theſe wordes doth the Prophet call Kinges only to the learning of the Law, whereby judgements are executed, forſomuch as he ſpecially ſaith, be ye learned you that are Judges of the earth. And it followeth: leſt the Lord waxe angry, and ſo you periſh from the way of righteouſneſs. Neither doth holy ſcripture (O Kings ſon) command you onely to be skilfully inſtructed in the Lawes, whereby you ſhall purchaſe and obtain the poſſeſſion of juſtice, but alſo in another place it biddeth you unfainedly to love Juſtice, where it ſaith: O ſet your love & affection upon Juſtice, you that are Judges of the earth, in the firſt chapter of the book of Wiſdome.

ſed ſolùm ad diſciplinam legis, qua Judicia redduntur, Reges invitat Propheta in his verbis, cum ſpecialiter ipſe dicat: *Erudimini, qui judicatis terram:* Et ſequitur: *Ne quando iraſcatur Dominus & pereatis de via juſta.* Nec ſolùm legibus, quibus juſtitiam conſequeris, (fili Regis) imbui te jubet ſacra Scriptura; ſed & ipſam juſtitiam diligere, tibi alibi præcipit, cum dicat: *Diligite Juſtitiam, qui judicatis terram*, Sapientiæ capitulo primo.

Chap. 5. *Ignorance of the Law cauſeth the contempt thereof.*

SEd quomodo juſtitiam diligere poteris, ſi non primò legum ſcientiam, quibus ipſa cognoſcatur, utcunque apprehenderis? Dicit namque Philoſophus, quod nihil amatum niſi cognitum. Quare *Fabius* Orator ait, *Quod felices eſſent artes, ſi de illis ſoli artifices judicarent.* Ignotum verò non ſolum non amari, ſed & ſperni ſolet. Quo poeta quidam ſic ait.

Omnia quæ neſcit, dicit ſpernenda colonus.

BUt how can you love Juſtice, unleſs you firſt have a ſufficient knowledge in the laws, whereby the knowledge of it is wonn and had? for the Philoſopher ſaith, that nothing can be loved except it be known. And therefore Quintilian the Orator ſaith, That happy ſhould Arts bee, if Artificers only were Judges of them. As for that which is unknown, it is wont not onely not to be loved, but alſo to be deſpiſed. And therefore a certain Poet thus ſaith.

The plowman doth deſpiſe and ſcoff
The thing he is not skilful of.

And

And this is the saying not of Plowmen alone, but also of learned and right skilful men. For if unto a natural Philosopher, that never studied the Mathematical sciences, a supernatural philosopher should say, that this Science considereth things severed from all matter and moving, according to their substantial being and reason: or the Mathematical man should say that his Science considereth things joyned to matter, and moving, after their substance, but severed according to reason: both these, though Philosophers, will the natural Philosopher, which never understood things severed from matter and motion, either

Et non coloni solum vox hæc est, sed & doctorũ peritissimorum quoq; virorum. Nam si ad Philosophum naturalem qui in Mathemat. nunquam studuit, metaphysicus dicat, quod sciẽtia sua cõsiderat res separatas ab omni materia & motu secundum esse & secundũ rationẽ: Vel Mathematicꝰ dicat, quod sua scientia cõsiderat res cõjunctas materiæ, & motui, secundũ esse, sed separatas secund' rationem: ãbos hos, licet philosophos, philosophus ille naturalis qui nunquã novit res aliquas separatas à materia & motu, vel

eſſentia vel ratione, ſpernet, eorumque ſcientias, licet ſua ſcientia nobiliores, ipſe deridebit, non alia ductus cauſa, niſi quia eorum ſcientias ipſe pernitus ignorat. Sic & tu, Princeps, leges Angliæ peritum miraberis, ſi dicat, quod frater fratri ſibi nequaquam uterino, non ſuccedet in hæreditate paterna, ſed potius hæreditas illa, ſorori integri ſanguinis ſui deſcendet, aut capitali domino feodi accidet ut eſcaeta ſua: Cum cauſâ legis hujus tu ignores, in lege tamẽ Angliæ doctũ, hujus caſus difficultas nul-

in being or in reaſon, utterly deſpiſe, and their ſciences, though indeed more excellent then his, will be laugh to ſcorne, moved ſo to doe by none other cauſe, but that he is altogether ignorant in their ſciences. Likewiſe you, moſt worthy Prince, would wonder at one skilfull in the Laws of England, if he ſhould ſay, that the brother ſhall not ſucceed his halfe brother in their Fathers inheritance, but rather his inheritance ſhall deſcend to the ſiſter of the whole bloud, or elſe it ſhall be intituled to the chiefe Lord of the fee as his eſcheat: Hereat you would much marvel, becauſe you know not the cauſe of this law, howbeit the difficultie of this caſe

nothing

nothing troubleth him that is learned in the laws of England. Wherefore it is a common saying, that an Art hath no foe but an ignorant person.

But God forbid, O noble Prince, that you should be an enemy to the Laws of that Realme, which you shall by succession inherit: or that you should despise them, seeing that the aforecited text of scripture instructeth you to the love of Justice. Wherefore, most Soveragine Prince, I do with most earnest affection require you to learne the laws of your Fathers Kingdome, whom you shall succeede, not only to the intent you may the rather avoyde these inconveniences, but also because many latenus perturbat. Quare & vulgariter dicitur, quod *ars non habet inimicum nisi ignorantem.*

Sed absit à te, *fili Regis*, ut inimiceris legibus Regni, quo tu successurus es, vel ut eas spernas, quum justitiam diligere, prædicta sapientiæ lectio te erudiat. Iterum igitur atque iterum, *Princeps inclytissime*, te adjuro, ut leges Regni patris tui, cui successurus es, addiscas. Ne dum ut inconvenientias has tu evites: Sed quia mens humana,

na, quæ naturaliter bonum appetit, & nihil poteſt appetere, niſi ſub ratione boni, mox ut per doctrinam bonum apprehenderit gaudet & illud amat, ac quanto deinceps illud plus recordatur, tanto amplius delectatur in eodem: quo doceris, quod ſi leges prædictas quas jam ignoras, intellexeris per doctrinam, cum optimæ illæ ſint, amabis eas. Et quanto plus eaſdem mente rertractaveris, delectabilius tu fruêris.

Nam omne, quod amatur, uſu tra-

mind, web naturally deſireth the thing that is good, & can deſire nothing but in reſpect that it is good, as ſoon as by learning it hath taken hold of that which is good, it becometh joyful and loveth the ſame, & the more that it is afterward occupied in the remembrance of the ſame, ſo much it is more delighted therein: Whereby you are taught that if you once by learning attain to the underſtanding of the aforeſaid laws, wherein you are now ignorant, ſeeing they be perfectly good, you muſt needs love them. And the more that you record them in your mind, ſo much the more delight and pleaſure ſhall you have in them. For whatſoever it is that is loved, the ſame draweth

eth the lover of it into the nature thereof. So that as the Philosopher saith, use or exercise becometh another nature: So a slip of a pear tree being grafted into the stock of an apple tree after that it hath taken, it so draweth the apple tree into the nature of the pear tree, that they both for ever after are rightly called a pear tree, & do bring forth the fruit of a pear tree. In like sort, continual use and practice of vertue causeth a full perfection thereof, in so much that the practiser of the same is afterward named thereby: as a man indued with modesty, of the use thereof is named modest; He that useth continency is called continent, and one garnished with wisdom

hit amatorem suum in naturam ejus. Unde, ut dicit Philosophus, *usus altera fit natura*: sic ramunculus pyri, stipiti pomi insertus, postquam coaluerit, ita pomum trahit in naturam pyri, ut ambæ deinceps merito pyrus appellentur, fructusque producant pyri. Sic & usitata virtus habitum generat, ut utens ea deinde a virtute illa denominetur, quo modestia præditus, usu modestus nominatur, continentiâ continens, & sapientiâ sapiens.

Quare

Quare & tu princeps, poſtquam juſtitia delectabiliter functus fueris, habitumque legis indutus fueris, merito denominaberis juſtus, cujus gratia tibi dicetur, *Dilexiſti juſtitiam, quo & odiſti iniquitatem, propterea unxit te dominus Deus tuus oleo lætitiæ præ conſortibus tuis regibus terræ.*

is called wiſe. Wherefore you alſo, moſt mighty Prince, when you are pleaſantly delighted in Juſtice, and therewith indued, in reſpect of the perfection of the law you ſhall worthily be called Juſt. For which cauſe it ſhall be ſaid unto you: Thou haſt loved Juſtice and hated iniquitie, and therefore the Lord thy God hath annointed thee with the oyle of gladneſs above the Kings of the Earth thy companions.

Chap. 6. ¶ *Here the Chancellour briefely repeateth the effect of all his perſwaſion.*

Now

NOw, moſt gracious Prince, is not all this enough to move your Highneſs to the ſtudie of the Law? Seeing that thereby you ſhall indue your ſelfe with Juſtice, which ſhall yield unto you the name of a juſt man, And ſhall alſo eſchew the infamie of ignorance in the Law. And further by the Law you enioying felicitie, ſhall be bleſſed in this life. And finally being furniſhed with a loving fear which is the wiſdom of God, you ſhall obtain and poſſeſs Charitie, which is a ſtedfaſt love to God-ward, and by the means thereof, cleaving to God, you ſhall by the Apoſtles ſaying, Be made one Spirit with him.

NOnne tunc, *Princeps ſereniſſime*, hæc te ſatis concitant ad legis rudimenta? cum per ea juſtitiam induere vales: quo & appellaberis juſtus, ignorantiæ quoque legis evitare poteris ignominiam: ac per legem fœlicitate fruens, beatus eſſe poteris in hac vita, & demum filiali timore indutus, qui Dei ſapientia eſt, charitatem, quæ amor in deum eſt imperturbatus, conſequeris, qua Deo adhærens, per Apoſtoli ſententiam, *Fies unus ſpiritus cum eo.*

Sed

Sed quia iſta ſine gratia lex operari nequit, tibi illam ſuper omnia implorare neceſſe eſt, legis quoque divinæ & ſanctarum ſcripturarum indagare ſcientiam.

Cum dicat ſcriptura ſacra, quod *vani ſum omnes, in quibus non ſubeſt ſcientia Dei*, Sapientiæ cap. xiii.

His igitur, *Princeps*, dum adoleſcens es, & anima tua velut tabula raſa, depinge eam, ne in futurum ipſa figuris minoris frugi delectabilius depingatur.

Quia etiam (ut Sapiens quidam ait)

But forasmuch as the Law without grace cannot accomplish theſe things, it is neceſſary and requiſite, that above all things you make earneſt interceſſion for it: and alſo that you become a ſtudious ſearcher of Gods law, and of the holy Scripture. For Scripture ſaith, that all men are vaine, in whom is not the knowledge of God, in the xiii. chapter of the booke of Wiſdome. Wherefore, moſt noble Prince, while you are yet young, & while your ſoul is as it were a ſmooth blanke table, write in it theſe things, leſt hereafter you happen to take pleaſure in writing leſſons of leſs profit therein. For as a certain wiſe man ſaith:

Where-

Whereof the veſſel new did firſt receive the taſt, Therein, when it is old, the ſcent will ever laſt.

Quod nova teſta capit, Inveterata ſapit.

What handicrafts man doth ſo negligently regard the profit of his child, whom whiles he is young, he will not ſee brought up in ſuch an occupation, as thereby he may afterward obtain to lead a merry life? So the Carpenter teacheth his ſon to cut with an axe: the ſmith to ſtrike with an hammer: a whom he intendeth to make a ſpiritual miniſter, him he procureth to be trained up in learning: So likewiſe is it convenient, that a Kings ſon, which ſhall govern the people after his father, be in his youth inſtructed in the laws.

Quis Artifex tam negligens profectus ſuæ prolis eſt, ut non eam, dum pubeſcit, artibus inſtruat, quibus poſtea vitæ ſolatia nanciſcatur? Sic lignarius faber ſecare delabro, ferrarius ferire malleo, filium inſtruit: & quem in ſpiritualibus miniſtrare cupit, literis imbui facit: Sic & principi, filium ſuum, qui poſt eum populum regulabit, legibus inſtrui, dum minor eſt, convenit.

Quali-

Qualiter ſi fecerint Rectores orbis, mũdus iſte ampliori, quam jam eſt, juſtitia regeretur; quibus ſi tu, ut jam hortor, facias, exemplum non minimum miniſtrabis.

Which order if the Rulers of the world would obſerve, then the world ſhould be governed with much more Juſtice then now it is, Unto whom, if you will follow mine exhortation, you ſhall miniſter no ſmall example.

¶ *Chap. 7. Now the Prince yieldeth himſelf to the ſtudie of the Laws, though he be yet diſquieted with certain doubts.*

Silente ex tunc Cancellario, *Princeps* ipſe ſic exorſus eſt. Viciſti me, vir egregie, ſuaviſſima oratione tua, qua & animum meum

THus when the Chancellor had ſaid, he held his peace, to whom the Prince began on this wiſe to ſpeak. You have overcome me, welbeloved Chancellour, with your moſt pleaſant talke, wherwith you have inflamed my

my minde with a fervent desire toward the knowledge of the Law. Howbeit two things there be, that doe toss my minde to and fro, and so disquiet it, that like a Ship in the raging waves it knoweth not which way to encline for ease. The one is, while it considereth how many years the students of the lawes bestow therein before they can attaine to sufficient knowledge of the same: which causeth my mind also to dread, lest that I should likewise spend the yeares of my youth. The other is, whether I shall apply my self to the studie of the Laws of England, or of the Ci-

ardore non minimo, legis feciſti ſitire documenta. Sed tamen duobus, me huc illucque agitantibus, animus ipſe affligitur: ut tanquam in turbido mari Cymba, neſciat quorſum dirigere proras. Unũ eſt, dum recolit quot annorum curriculis leges addiſcentes, earum ſtudio ſe conferunt, antequam ſufficientem earundem peritiam nanciſcantur: quo timet animus ipſe ne conſimiliter ego præteream annos juventutis meæ. Alterum eſt, an Angliæ Legum vel Ci-

vilium, quæ per orbem præcelebres ſunt, ſtudio operam dabo. Nam non niſi optimis legibus populum regere licet, etiam ut dicit Philoſophus, *Natura deprecatur optima.* Quare libenter ſuper his, quod tu conſulis, auſcultaremus. Cui Cancellarius. Non ſunt hæc, *fili Regis*, tantis celata myſteriis, ut deliberatione egeant ingenti, quare, quid in his mihi viſum eſt prodeſe, non differemus.

bile laws, which throughout the whole World are chiefely eſteemed; for people may not be governed but by right good Laws, and as the Philoſopher ſaith, Nature coveteth that which is beſt. Wherefore I would gladly hear your counſel in this behalfe. To whom the Chancellour made this anſwer. Theſe matters, O Kings Sonne, are not hid under ſo deep and darke myſteries, that they require any great deliberation, or advisement. And therefore what I think beſt herein I will not hide.

Chap. 8. *So much knowledge of the Law as is neceſſarie for a Prince is ſoon had.*

Ariſtotle

ARistotle in the first Book of his natural Philosophie saith, that then we suppose our selves to have the knowledge of every thing, when we know the causes and beginnings thereof even to the principles, upon the which text the Commentatour saith, that the Philosopher by beginnings or principles did understand the causes efficient, by the term Causes he understood causes final, and by Elements, matter and forme. But in the Law there are not matter and forme, as in things natural and compound. Now be it there be in them certaine Elements, out of the which they proceede as out of

PHilosophus in primo Physicorum dicit, quod *Tunc unumquodque scire arbitramur, cum causas & principia ejus cognoscamus usque ad elementa.* Super quem textum commentator dicit, quod Aristoteles per principia intellexit causas efficientes, per causas intellexit causas finales, & per Elementa materiam & formam. In Legibus vero non sunt materia & forma, ut in Physicis & compositis. Sed tamen sunt in eis Elementa quædam, unde ipsæ profluunt, ut ex

materia & forma, quæ ſunt *conſuetudines, ſtatuta, & jus naturæ*, ex quibus ſunt omnia jura regni, ut ex materia & forma ſunt quæque naturalia: & ut ex literis, quæ etiam elementa appellantur, ſunt omnia quæ leguntur. *Principia* autem, quæ Commentator dicit eſſe cauſas efficientes, ſunt quædam univerſalia, quæ in legibus Angliæ docti, ſimiliter & Mathematici, *Maximas* vocant: Rethorici, Paradoxas: & Civileſtæ, Regulas juris denominant. Ipſa revera non

matter and forme, theſe are cuſtomes, ſtatutes, and the Laws of nature, of the which all the lawes of the Realm have their begining, even as all natual things have of matter and forme, and as all things that are writtẽ and read do conſiſt of letters, which alſo are called elements. But principles, or beginnings, which are as the Commentarie ſaith, cauſes efficient, they are certaine univerſall propoſitions, which they, that be learned in the Laws of England, and likewiſe the Mathematicals do terme Maximes: the Rhethoricians do call the ſame Paradoxes: and the Civilians term them rules of the law. Theſe indeed cannot be proved by force of argu-

arguments, or by demonſtrations Logicall: But as it is ſaid in the ſecond book of Poſteriorum, they are known by induction, by the way of ſenſe and memory. Wherefore in the firſt book of his naturall Philoſophy, Ariſtotle ſaith, that principles are not made of others, nor one of them of another, but all other be made of them, And according thereunto in the firſt book of his Topicks he writeth, that every principle is a ſufficient proofe of it ſelf. And therefore the Philoſopher ſaith, that ſuch as deny them, ought not to be diſputed or reaſoned withall: becauſe that as he writeth in the ſixth book

argumentorum vis aut demonſtrationibus logicis dignoſcuntur: Sed ut ſecundo *Poſteriorum* docetur, inductione, via ſenſus & memoriæ, adipiſcuntur. Quare & primo Phyſicorum philoſophus dicit, quod *principia non fiunt ex aliis, neque ex alterutris, ſed ex illis alia fiunt*, quo primo Topicorum ſcribitur, quod *unumquodque principiorum eſt ſibi ipſi fides*. Unde, *cum negantibus ea*, dicit Philoſophus, *non eſt diſputandum*: quia, ut ſcribi-

tur vi. Ethicorum, *ad principia non eſt ratio.* Igitur principiis imbuendi ſunt, quiqui gliſcant aliquas intelligere facultates. Ex eis etenim, revelantur cauſæ finales, ad quas, rationis ductu, per principiorum agnitionem, pervenitur; unde, his tribus, videlicet, *Principiis, Cauſis & Elementis ignoratis, ſcientia, de qua ipſa ſunt, penitus ignoratur.* Et his cognitis, etiam ſcientiam illam cognitam eſſe, non determinate, ſed in confuſo &

of his Moral philoſophie, there is no reaſon to be given for principles. Wherefore whatſoever they be that covet to profit in the knowledge of any faculties, they muſt needs firſt be furniſhed with principles. For by them are opened the cauſes final, unto the which by that direction of reaſon, through the knowledge of the principles, we do attain: wherefore theſe three, viz. Principles, Cauſes, and Elements, being unknown, the ſcience, wherof they are, is altogether unknown. And the ſame three being known, the ſcience alſo, whereof they are, is thought to be known, not determinately or preciſely, but ſuperficially after

after a conclute & universal sort.

Thus we think our selves to have the knowledge of Gods Laws, when we understand our selves to know faith, charitie, and hope, and also the Sacraments of the Church, and the Commandements of GOD, leaving to the Prelates of the Church the other mysteries of Theologie. Wherefore the LORD saith unto his Disciples: To you it is given to know the mystery of the kingdome of GOD, but to others in Parables, that seeing they may not see, &c. And the Apostle saith, Not to be wiser, then it behooveth. And in an other place,

universaliter arbitratur.

Sic Legem divinam nos nosse indicamus, dum fidem, charitatem, & spem, sacramenta quoque Ecclesiæ ac Dei mandata, nos intelligere sentiamus; cætera Theologiæ mysteria Ecclesiæ præsidentibus relinquentes. Quare dominus discipulis suis ait: *Vobis datum est nosse mysterium regni Dei, cæteris autem in parabolis, ut videntes non videant, &c.* Et Apostolus dixit, *non plus sapere quam oportet sapere.* Et alibi,

non alta ſapientes. Sic & tibi, *Princeps*, neceſſe non erit myſteria legis Angliæ longo diſciplinatu rimare, ſufficiet tibi, ut in Grammatica tu profeciſti, etiam & in legibus proficias. Grammaticæ verò perfectionem, quæ ex *Etymologia*, *Orthographia*, *Proſodia*, & *Syntaxi*, quaſi ex quatuor fontibus profluit, non ſpecie tenus induiſti, & tamen grammatica ſufficienter eruditus es, ita ut merito grãmaticus denomineris. Conſimiliter quoq; denominari legiſta mereberis, ſi legum principia

Not being high in wiſedome. In like manner, O moſt worthy Prince, it ſhall not be needful for you with long ſtudies to ſearch out the ſecret myſteries of the Law of England. It ſhall ſuffice for you, as you have profited in grammer, ſo alſo to profit in Law. Unto the perfection of Grammar, ſpringing out of Etymologie, Orthographie, Proſodie, and Conſtruction, as out of foure fountaines, you have not exactly attained, and yet you are ſo ſufficiently grounded in grammer, that you may well be called a Grammarian. Likewiſe ſhall you be well worthie to be called a Lawyer, if you ſearch out the principles and

and causes of the Laws, even to the elements, after the manner of a scholar or a learner. For it shall not be needful or expedient for you by the travel of your own wit, to studie out the hid mysteries of the Law, But let that geare be left to your Judges and men of Law, which in the Realme of England are called Serjeants at Law, and to other professors of the law commonly called Apprentices: For you shall better execute judgements by others, then by your self: Neither hath it been seen that any King of England hath pronounced judgement with his own mouth, And yet nevertheless the judgments of the Realme are his, though

& causas, usq; ad elementa, discipuli more indagaveris. Non enim expediet tibi, propria sensus indagine, legis sacramenta rimare, sed relinquantur illa judicibus tuis & advocatis, qui in regno Angliæ servientes ad legem appellantur, similiter & aliis peritis, *quos Apprenticios* vulgus denominat: melius enim per alios, quam per teipsum judicia reddes, quo, *proprio ore*, *nullius regum Angliæ* judicium proferre usus est, & tamen sua sunt omnia judicia regni licet per alios ipsa

ſa reddãtur, ſicut & *Judicum omnium ſententias, Joſaphat* aſſeruit *eſſe judicia dei.* Quare, *tu Princeps ſereniſſime*, parvo tẽpore, parva induſtria, ſufficienter eris in legibus regni Angliæ eruditus, dummodo ad ejus apprehenſionem tu cõferas animũ tuum. Dicit namq; *Seneca* in epiſtola ad *Lucillum: Nil eſt quod pertinax opera, & diligens cura, non expugnat.* Noſco namque ingenii tui perſpicacitatem, quo audacter pronuncio, quod in legibus illis, licet earũ peritia qualis judicibus neceſſaria eſt, vix xx.

by other they be uttered and pronounced. Like as alſo King Joſaphat affirmed the ſentences of all the Judges to be the judgments of God. Wherefore, moſt gracious Prince, you ſhall in ſhort time with little labour be ſufficiently learned in the Laws of England, ſo that you doe apply your minde to the obtaining thereof. For Seneca in an Epiſtle to Lucillus, ſaith: There is nothing which earneſt travell and diligent care atchieveth not. And ſo well do I know the prompt towardneſſe of your nature, that I dare be bold to ſay, that in thoſe Laws (though the exact knowledge of them, ſuch as is required in jud-

ges, can ſcant be gotten in the ſpace of 15. years) you ſhall ſufficiently in one year attain to ſo much underſtanding as is conuenient for a Prince. Neither in the meane time ſhall you neglect and omit the ſtudy of martial diſcipline, whereunto you are ſo fervently given, but during all the ſame year in ſtead of recreation you ſhall uſe the practice thereof at your pleaſure.

annorum lucubrationibus acquiratur, tu doctrinam Principi congruam in anno uno ſufficienter nanciſceris, nec interim militarem diſciplinam, ad quam tam ardenter anhelas, negliges, ſed ea, recreationis loco, etiam anno illo, tu ad libitum perfrueris.

Chap. 9. A King, whoſe Government is politick, cannot change the Law of his Realme.

THe ſecond point, moſt worthie Prince, whereof you ſtand in fear, ſhall in like manner, as eaſily as the other, be confuted. For you ſtand in doubt,

SEcundum vero, *Princeps*, quod tu formidas, conſimili nec majori opera elidetur. Dubitas nempe, an Anglorum

glorum legum, vel civilium ſtudio te conferas, dum civiles ſupra humanas cunctas leges alias, fama per orbem extollat glorioſa. Non te contriſtet, *fili Regis*, hæc mentis evagatio: Nam non poteſt rex Angliæ, ad libitum ſuum, leges mutare regni ſui. Principatu namque nedum *regali*, ſed & *politico*, ipſe ſuo populo dominatur. Si regali tantum ipſe præeſſet eis, Leges regni ſui mutare ille poſſet, *Tallagia* quoque & cætera onera eis imponere ipſis inconſultis, quale dominium denotat leges

whether it be better for you, to give your mind to the ſtudie of the Laws of England, or of the Civile lawes, becauſe they thorowout the whole world are advanced in glory and renowme above all other mans lawes. Let not this ſcruple of minde trouble you, O moſt noble Prince: For the King of England cannot alter nor change the laws of his Realme at his pleaſure. For why he goverꝛneth his people by power, not only royal, but alſo politique. If his power over them were royal only, then he might change the Laws of his realme charge his ſubiects with Tallage & other burdens without their cõſent, & ſuch is the dominion that the civil Laws purporte, when

when they say, The prince his pleasure hath the force of a Law. But from this, much differeth the power of a King, whose government over his people is politique, For he can neither change Laws without the consent of his subjects, nor yet charge them with strange impositions against their wills. Wherefore his people do frankly and freely enjoy and occupy their own goods, being ruled by such laws as they themselves desire. Neither are they pilled either of their own king or of any other. Like pleasure also a freedome have the subjects of a king ruling only by power royal, so long as he falleth not into tyranny. Of such a King speaketh Aristotle

civiles, cum dicant *qd principi placuit, legis habet vigorem.* Sed longe aliter potest Rex, politice imperãs genti suæ, quia nec leges ipse sine subditorum assensu mutare poterit, nec subjectum populum retinentẽ onerare impositionibus peregrinis, quare populus ejus libere fruetur bonis suis, legibus, quas cupit regulatus, nec per Regem suum, aut quemvis alium depilatur, consimiliter tamen plaudit populus, sub Rege regaliter tantum principante, dummodo ipse in tyrannidem non labatur.

De

De quali rege dicit philoſophus iij. politicorum, quod *melius eſt Civitatem regi viro optimo, quam lege optima.* Sed quia non ſemper contingit præſidentē populo, hujuſmodi eſſe virum, *ſanctus Thomas* in libro, quem Regi Cypri ſcripſit, *de regimine principum*, optare cenſetur, regnum ſic inſtitui, ut rex non libere valeat populum tyrannide gubernare, quod ſolum fit dum poteſtas Regia lege politica cohibetur: Gaude igitur, *princeps optime*, talem eſſe legem regni in quo tu ſucceſſurus

ſtotle in the third Book of his Civil Philoſophie, ſaying, that it is better for a Citie to be governed by a good King, then by a good Law. But foraſmuch as a King is not ever ſuch a man, therefore Saint Thomas in the Book, which he wrote to the King of Cyprus, of the governance of Princes, wisheth the ſtate of a Realme to be ſuch, that it may not be in the kings power to oppreſs his people with tyranny, Which thing is performed onely, while the power Royal is reſtrained by power politique. Wherefore therefore, O ſoveraign Prince, and be glad, that the Law of your Realm, wherein you ſhall ſucceed, is ſuch,

For

For it shall exhibite and minister to you and your people no small securitie and comfort. With such Laws as saith the same S^t. Thomas should all mankind have been governed, if in Paradise they had not transgressed Gods commandement: with such Laws also was the Synagogue ruled, while it served under God only as King, who adopted the same to him for a peculiar kingdome, But at the last, when at their request they had a man King set over them, they were then under royal Laws onely, brought very low. And yet under the same Laws, while good Kings were their Rulers, they lived wealthily, and when willful and ty-

es, quia, & tibi, & populo, ipsa securitatem præstabit non minimã, & solamen. Tali lege, ut dicit idem *sanctus*, regulatum fuisse totũ genus humanum, si in paradiso Dei mandatũ non præterijsset: tali etiã lege regebatur Synagoga, dum sub solo Deo Rege, qui eam in regnum peculiare adoptabat, illa militabat, sed demum ejus petitione, rege homine sibi constituto, sub lege tantum legali ipsa deinceps humiliata est. Sub qua tamen, dum optimi Reges sibi præfuerunt, ipsa plausit, & dum

discoli

diſcoli ei præſſebant, ipſa incõſolabiliter lugebat, ut regum liber hæc diſtinctius manifeſtarit. Tamen quia de materia iſta in opuſculo, quod tui contemplatione de *natura legis naturæ* exaravi, ſufficienter puto me diſceptaſſe, plus inde loqui jam deſiſto.

rannous Kings had the government of them, then they continued in great diſcomfort and miſery, as the book of Kings doth more plainly declare. But for ſo much, as I ſuppoſe, I have ſufficiently debated this matter in my work which at your requeſt I compiled of the nature of the law of nature, therefore at this time I ſurceaſe to ſpeak thereof any more.

Chap. 10. *Here the Prince demandeth a queſtion.*

TUnc *princeps* illico ſic ait. Unde hoc Cancellarie, *quod Rex unus plebem ſuam regaliter tantum regere valeat, & regi alteri poteſtas hujuſmodi denegatur*, æqualis faſtigij cum ſint Reges

IMmediately the Prince thus ſaid. How cometh this to paſs, good Chancellour, that one King may govern his people by power Royal onely, and that another king can have no ſuch power, ſeeing both theſe Kings are in dignity equall,

I

I cannot choose but much muse and marvaile why in power they should thus differ.

ambo, cur in potestate sint ipsi dispares nequeo non admirari.

Chap. 11. *The answer to this question is here omitted, for that in another work it is handled at large.*

I have sufficiently, quoth the Chancellor, declared in my foresaid work, that the King, whose government is politick, is of no less power, then he that royally ruleth his people after his own pleasure, howbeit they differ in authority over their subjects, as in the same work I have shewed, and say I still. Of which difference I will open unto you the cause as I can.

CAncellari⁹: Non minoris esse potestatis, regē politicè imperantem, quā qui, ut vult, regaliter regit populū suum, in supradicto opusculo sufficiēter est ostēsum, diversæ tamē auctoritatis eos in subditos suos ibidē ut jā nullaten⁹ denegavi, cujus diversitatis causam, ut potero, tibi pādam.

Chap. 12. *How Kingdomes ruled by royal Government only first began.*

Men in times passed, excelling in power,

HOmines quondam, potentia præpol-

præpollentes, avidi dignitatis & gloriæ, vicinas ſæpe gentes ſibi viribꝰ ſubjugarunt, ac ipſis ſervire obtemperare quoq; juſſionibus ſuis compulerũt, quas juſſiones ex tunc leges hominibꝰ illis eſſe ipſi ſancierunt. Quarum perpetione diutina, ſubjectus ſic populus, dũ per ſubjiciẽtes à cæterorũ injurijs defẽdebatur, in ſubjiciẽtium dominiũ conſentierunt: Opportunius eſſe arbitrãtes, ſe uniꝰ ſubdi imperio, quo erga alios defenderẽtur, quam omnium eos infeſtare volentium oppreſſionibus exponi. Sicq; regna

grædy of dignity & glory, did many times by plain force ſubdue unto them their neighbours the nations adioyning: compelled them to do them ſervice & to obey their commandments, which commandments afterward they decreed to be unto thoſe people very laws. And by long ſufferance of the ſame, the people ſo ſubdued, being by their ſubduers defended from the iniuries of other, agreed & conſented to live under the dominion of the ſame their ſubduers: thinking it better for them to be under the empire of one man, which might be able to defend them againſt other, then to be in danger to be oppreſſed of all ſuch as would violently offer them any wrong.

And

And thus certain kingdomes were begun, And those subduers thus ruling the people unto them subdued, took upon them of ruling to be called rulers, which our language termeth kings, And their rule or dominion was named onely royal or kingly. So Nemroth was the first that got unto himselfe a Kingdome, And yet in the holy Scriptures he is not called a King, but a stout and mighty hunter before the Lord: For like as a Hunter subdueth wilde beasts living at their liberty: so did he bring men under his obedience. So did Belus subdue the Assyrians, & Ninus the most part of Asia. So also did the Romans usurpe the Empire of the

quædam inchoata sunt, & subjicientes illi, dum subjectum populum sic rexerunt, à *regendo sibi nomen regis usurparunt*, eorum quoq; dominatus tantum *regalis* dictus est. Sic *Nembroth* primus sibi regnum comparavit, tamen non rex ipse, sed *Robustus venator coram domino* sacris literis appellatus est: Quia ut venator feras libertate fruētes, ipse homines sibi compescuit obedire. Sic *Belus Assyrias*, & *Ninus* quàm magnam *Asiæ* partem, ditioni suæ subegerunt. Sic & *Romani* orbis imperium

uſurparunt qualiter fere in omnibus gẽtibus regna inchoata ſunt. Quare, dum filij Iſrael regẽ poſtulabant, ſicut tunc habuerunt omnes gentes, dominus inde offenſus, legem *regalem* eis per Prophetam explanari mandavit. Quæ non aliud fuit, quam placitum regis eis præeſſentis, ut in primo Regum libro plenius edocetur. Habes nunc (ni fallor) *Pinceps chariſſime*, formã exordij regnorũ, regaliter poſſeſſorum. Quare, quomodo regnum *politice* regulatum, primitus erupit, etiam jam propulare

whole world, and thus almoſt were the kingdomes of all nations begun. Wherefore the Lord being diſpleſed with the children of Iſrael requiring to have a king as then all other nations had, commanded the law regal to be declared unto them by the Prophet. Which law regal was no other thing, but the pleaſure of the king their governor, as in the 1. book of kings more fully it is contained. Now you underſtand, as I ſuppoſe, moſt noble Prince, ỹ forme & fashiõ of the beginning of thoſe kingdomes, that be regally poſſeſſed & ruled. Wherefore, now I will aſſay to make plain to you how & by what means the government of the kingdome politique, took his firſt

entrance

entrance and beginning, to the end & intent, that when you know the beginnings of them both, it may be right easie for you thereby to discern the cause of the diversitie, which in your question is conteined.

conabor, ut cognitis amborum regnorum initiis, causam diversitatis, quam tu quæris, inde elicere tibi facillimum sit.

Chap. 13. *How Kingdomes of politique governance were first begun.*

Saint Augustine in the xxiii. chapter of his xix. book de Civitate Dei, saith, That a people is a multitude of men associated by the consent of law, and communion of wealth. And yet such a people being headlesse, that is to say, without a head, is not worthy to be called a body. For as in things natural, when the head is cut off, the residue is not called a bo-

Sanctus Augustinus in libro xix. *de Civitate Dei, cap.* xxiii. dicit, Quod *populus est cœtus hominum, juris consensu et utilitatis communione sociatus.* Nec tamē populꝰ hujusmodi dux acephalus (i) sine capite, esse corpus vocari meretur. Quia ut in *naturalibus*, capite detrūcato, residuū non cor-

pus, ſed truncum appellamus, ſic & in *politicis*, ſine capite communitas nullatenus corporatur: Quo primo polit. dicit *Philoſophus*, quod *quandocunque ex pluribus conſtituitur unum, inter illa, unum erit regens, & alia erunt recta*, Quare populum ſe in regum aliunde corpus *politicum* erigere volente, ſemper oportet unum præficere totius corporis illius regitivum, quem *Regem* nominare ſolitu eſt. Hoc ordine, ſicut ex embryone corpus ſurgit phyſicum, uno capite regulatum, ſic ex populo erepit reg-

die but a truncheon, ſo likewiſe in things politique, a communaltie without a head is in no wiſe corporate: Wherefore, Ariſtotle in the firſt book of his civil philoſophy ſaith, that whenſoever one is made of many, among the ſame, one ſhall be the ruler, and the other ſhall be ruled, wherefore a people that will raiſe themſelves into a kingdom, or into any other bodie politique, muſt ever appoint one to be chief ruler of the whole bodie, which in kingdoms is called a King. And in this kind of order, as out of the embryon riſeth a body natural, ruled by one head, even ſo of a multitude of people ariſeth

a

a kingdome, which is a body mysticall, governed by one man as by an head. And like as in a natural body, as saith the Philosopher, the heart is the first that liveth, having within it bloud, which it distributeth among all the other members, whereby they are quickned and do live, semblably in a body politique, the intent of the people is the first lively thing, having within it blood, that is to say, politique provision for the utility and wealth of the same people, which it dealeth forth and imparteth aswell to the head as to all the members of the same body, whereby the body is nourished & maintained. Furthermore the law un-

num, quod corpus extat mysticum uno homine ut capite gubernatum. Et sicut in naturali corpore, ut dicit Philosophus, cor est primū vivens, habens in se sanguinē, quem emittit in omnia ejus membra, unde illa vegetātur & vivunt: sic in corpore politico intēsio populi primum vividum est, habens in se sanguinem, viz. provisionem politicam utilitati populi illius, quam in caput & in omnia membra ejusdem corporis, ipsa transmittit, quo corpus illud alitur & vegetatur. Lex vero sub qua

cœtus hominum, populus efficitur, nervorũ corporis phyſici tenet rationem: Quia ſicut per nervos compago corporis ſolidatur, ſic per legem, quæ à *ligando* dicitur, corpus huiuſmodi myſticũ ligatur, & ſervatur in unũ, & ejuſdẽ corporis mẽbra ac oſſa, quæ veritatis qua cõmunitas illa ſuſtẽtatur, ſoliditatẽ denotant, per legẽ, ut corpus naturale per nervos, propria retinent jura: Et ut nõ poteſt caput corporis phyſici, nervos ſuos cõmutare, neque mẽbris ſuis proprias vires, & propria ſanguinis alider the wch a multitude of men is made a people, repreſenteth the ſemblãce of ſinews in the body natural: becauſe that like as by ſinews the ioyning of the body is made ſound, ſo by the law, wch taketh the name à ligãdo, that is to wit, of binding, ſuch a myſtical body is knit & preſerved together: & the members and bones of the ſame body, whereby is repreſented the ſoundneſs of the wealth, wherby that body is ſuſtained, do by the laws, as the natural body by ſinewes, retein every one their proper functions: And as the head of a body natural cannot change his ſinews nor cannot deny or withold from his inferior members their peculiar powers, & ſeveral nourifhments of blood,

blood, no more can a king, which is the head of a body politick, change the Laws of that body, nor withdraw from the same people their proper substance against their wills and consents in that behalfe. Now you understand, most noble Prince, the form of institution of a kingdome politique, whereby you may measure the power, which the king thereof may exercise over the Law and subjects of the same. For such a king is made and ordained for the defence of the Law of his subjects & of their bodies, and goods, whereunto he receiveth power of his people, so that he cannot govern his people by any other power. Where-

menta denegare, nec rex, qui caput corporis politici est, mutare potest leges corporis illius, nec ejusdē populi substātias proprias subtrahere, reclamantibus eis aut invitis. Habes ex hoc jam, *princeps*, instituti omnis *politici* regni formā, ex qua metiri poteris potestatē, quā Rex ejus in leges ipsius, aut subditos valeat exercere. Ad tutelā namq; legis subditorū, ac eorū corporū, & bonorū, rex hujusmodi erectus est, & ad hāc potestatē a populo effluxā ipse habet, quo ei non licet potestate alia suo popu-

populo dominari: quare ut poſtulationi tuæ, qua certiorari cupis, unde hoc pervenit qd poteſtates regũ tam diverſimode variantur, ſuccinctius ſatisfaciã, Firme cõjector, qd diverſitates inſtitutionũ dignitatum illarũ, quas propalavi, prædictã diſcrepãtiã ſolũmodo operantur, prout rationis diſcurſu, tu ex præmiſſis poteris exhaurire. Sic namq; Regnum *Angliæ*, qd ex *Bruti* comitiva *Trojanorum*, quã ex *Italiæ* & *Græcorum* finibus produxit, in dominiũ *politicum & regale*, prorupit: Sic & *Scotia, quæ ei quondam ut*

foze to ſatisfie your requeſt, in that you deſire to be certified, how it cometh to paſs that in the powers of kings there is ſo great diverſity: Surely in mine opinion the diverſity of the inſtitutions oz firſt ozdinances of thoſe dignities, which I have now declared, is the onely cauſe of this fozeſaid diffzrence, as of the pzemiſſes by the diſcourſe of reaſon you may eaſily gather. Foz thus the Kindgdome of England out of Brutes retinue of the Trojanes, which he bzought out of the Coaſts of Italie and Greece, firſt grew to a politique and regal dominion: Thus alſo Scotland, which ſometime was ſubject to

England

England as a Dukedome thereof, was advanced to a politique and royal Kingdome. Many other kingdomes also had thus their first beginning not onely of regal but also of politique government. Wherefore Diodorus Siculus in his second book of old histories, thus writeth of the Egyptians: The Egyptian Kings lived first, not after the licentious manner of other rulers, whose will and pleasure is in stead of law, but they kept themselves as private persons in subiection of the laws, And this did they willingly, being perswaded that by obeying the laws they should be blessed. For of such rulers, as followed their own lusts,

ducaq; obedirit, in regnum crevit politic'. & regale. Alia quoq; plurima regna, nedũm regaliter sed & politice regulari, tali origine jus sortita sunt. Unde *Diodorus Siculus* in secundo libro *historiarum priscarum* de *Ægyptiis*, sic scribit: suam primum *Egyptii* reges vitam non aliorum regnantium, quibus voluntas pro lege est, traducebant licentia, sed veluti privati tenebantur legibus, neque id ægre ferebant, *existimantes parendo legibus, se beatos fore.* Nam ab his, qui suis indulgerent cupiditatibus, multa

multa cenſebant fieri, quibus dimpna periculaq; ſubirent. Et in quarto libro ſic ſcribit: Aſſumptus in Regem *Ethiopum*, vitam ducit ſtatutam legib⁹ omniaque agit juxta patrios mores, neque præmio, neque pœna afficiens quenquam præter præditam a ſuperioribus legem. Conſimiliter loquitur de rege *Saba in fœlici Arabia*, & aliis quibuſdam regibus qui priſcis temporibus feliciter regnabant.

they ſuppoſed many things to be done, whereby they were brought in danger of divers harms & perils. And in his fourth Book thus he writeth: The Ethiopian king as ſoone as he is created, he ordereth his life according to the lawes, & doth all things after the maner & cuſtome of his country, aſſigning neither reward nor puniſhment to any man, other then the law made by his predeceſſours appointeth. He reporteth likewiſe of the king of Saba in Arabia the happy, & of certain other kings which in old time honorably reigned.

Chap. 14. *Here the Prince compendiouſly abridgeth all that the Chancellor afore hath diſcourſed at large.*

Cui *Princeps*, Effugaſti, Can-

To whom the Prince thus anſwered. You have

have, good Chancellour, with ẏ clear light of your declaration quite driven away ẏ cloudy mist, wherwith the brightnes of my mind was darkned: so that I do most evidently se that no nation did ever of their own voluntary mind incorporate themselves into a kingdom for any other intent, but only to the end, that thereby they might with more safety then before maintain themselves, & enjoy their goods from such misfortunes & losses as they stood in fear of. And of this intent should such a natiõ be utterly defrauded, if then their king might spoile them of their goods, which before was lawfull for no man to do. And yet should such a people be much more injured,

cellarie, declarationis tuæ lumine tenebras, quibus obducta erat acies mẽtis meæ, quo clarissime jam conspicio, quod non alio pacto gens aliqua, proprio arbitrio, unquam se in regnum corporavit, nisi ut per hoc, se & sua, quorum dispendia formidebant, tutius quam antea possiderent, quasi proposito gẽs hujusmodi fraudaretur, si exinde facultates eorum eripere possit Rex suus, quod antea facere ulli hominum non licebat. Et adhuc gravibꝰ multo populus talis læderetur,

si

ſi. deinde peregrinis legibus, etiam ipſis forſan exoſis, regerentur. Et maxime, ſi legibus illis eorum minoraretur ſubſtantia, pro cujus vitanda jactura, ut pro ſuorum tutela corporum, ipſi ſe Regis imperio, arbitrio proprio, ſubmiſerunt, non potuit revera poteſtas hujuſmodi ab ipſis erupiſſe: & tamen ſi non ab ipſis, Rex hujuſmodi ſuper ipſos nullam obtineret poteſtatem. E regione, aliter eſſe concipio de regno, quod Regis ſolum auctoritate & potentia incorporatum eſt,

if they ſhould afterward be governed by foreine and ſtrange Laws, yea, and ſuch as they peradventure deadly hated and abhorred. And moſt of all, if by thoſe Laws, their ſubſtance ſhould be diminiſhed, for the ſafegard whereof, as alſo for the defence of their own bodies, they of their own free will ſubmitted themſelves to the governance of a King, no ſuch power ſurely could have proceeded from them: And yet if they had not been, ſuch a King could have had no power over them: Now on the other ſide I perceive it to ſtand much otherwiſe with a kingdome, which onely by the authoritie of a king is incorporate,

For

For ſuch a Nation is no otherwiſe ſubject unto him, but that the ſame Nation which by his pleaſure is made his Kingdome, ſhould obey his Laws, and be ruled by the ſame, being nothing elſe but his like pleaſure. Neither have I yet, good Chancellour, forgotten that, which in your treatiſe of the nature of the law of nature, you have with pithie reaſons clearly proved: concerning that the power of theſe two Kings is equal. Howbeit the power of the one, whereby he is at liberty to deal wrongfully, is not by ſuch liberty augmented and increaſed; as to be of habilitie to decay and die, is no habilitie, but in reſpect of the priuation quia non alio pacto gens talis ei ſubjecta eſt, niſi ut ejus legibus quæ ſunt illius placita, gens ipſa, quæ eodem placito regnum ejus effecta eſt, obtemperaret & regeretur. Neque, Cancellarie, à mea hucuſque memoria elapſum eſt, quod alias in tractatu de natura legis naturæ horum duorũ regum æqualem eſſe potentiam, doctis rationibus oſtendiſti, dum poteſtas qua eorum alter perperã agere liber eſt, libertate hujuſmodi nõ augetur; ut poſſe lãgueſcere, morive, potentia nõ eſt, ſed propter priuationes in adjecto, impo-

impotentia potius denominandum. Quia ut dicit *Boetius*, *potentia non eſt niſi ad bonum*, quod poſſe male agere, ut poteſt Rex regaliter regnans, liberius quam Rex politice dominans populo ſuo, potius ejus poteſtatem minuit, quam augmentat. Nam ſancti ſpiritus, jam confirmati in gloria, qui peccare nequeunt, potentiores nobis ſunt, qui ut omne facinus liberis gaudemus habenis. Solum igitur mihi jam ſupereſt à te ſciſcitandum, *ſi Lex Angliæ*,

and feeblenes in the thing, it is rather to be called a diſhabilitie. Becauſe that as Boetius ſaith, hability and power is not but to good: So that to be of habilitie or power to doe evil, (as is the King that Regally doth rule, and that with much more libertie, then the King that hath a politick dominion over his people) is rather a diminution then an increaſe of power. For the holy ſpirits, which are now eſtabliſhed in glorie, and cannot ſinne, do in power far excell and paſſe us which have a delight & pleaſure to run headlong into all kind of wickedneſs. Now therefore I have but this one only queſtion to demande of you, whether the law of England,

to

to the ſtudy whereof you exhort me, be as good and effectual for the government of that kingdome, as the Civil law, whereby the holy empire is governed, is thought ſufficient for the government of the whole world? If with ſound reaſons & apparent demonſtrations you reſolve me in this point, I will ſtraight yield me to the ſtudy of the Laws, without further troubling you with my queſtions in this matter.

ad cujus diſciplinatum me provocas, *bona & efficax eſt ad regimen regni illius, ut lex civilis, qua ſacrum regulatur imperium, ſufficiens arbitratur ad orbis regimen univerſi?* Si me in hoc, demonſtrationibus congruis, indubium reddideris, ad ſtudium legis illius illico me cõferã, nec te poſtulationib⁹ meis ſuper his, amplius fatigabo.

Chap. 15. *That all Laws are the law of nature, cuſtomes or ſtatutes.*

THe Chancelor anſwered, ſaying: you have well cõmitted to memory, moſt worthy Prince, all that I have hitherto declared unto you. Where-

CAncellarius: memoriæ tuæ, *princeps optime*, commendaſti, quæ tibi hucuſque ſuggeſſi, quare &

quæ jam interrogas meritus es ut pandam. Scire te igitur volo, quod *omnia jura humana, aut sunt lex naturæ, consuetudines, vel statuta, quæ & constitutiones* appellantur. Sed consuetudines & legis naturæ sentētiæ postquā in scripturā redactæ, & sufficienti auctoritate principis promulgatæ fuerint, ac custodiri jubeātur, in constitutionū sive statutorū naturam mutantur, & deinde penalius, quā antea subditos principis ad earum custodiam constringunt, severitate mādati illius,

fore you are well worthy to have this doubt opened, thereupon now you have moved your question. You shall therefore understand, that all humane Laws are either the Law of nature, or customes, or else statutes, which are also called constitutions. But customes and the sentences of the Law of nature, after that they were once put in writing, and by the sufficient authority of the Prince published & commanded to be kept, were changed into the nature of constitutions, or statutes, and did after that more penally, then before, bind the subjects of the Prince to the keeping of them, by the severity of his commandement.

Of

Of this sort are the most part of the Civile laws, which of the Roman Princes are digested in great volums, and by their authority commanded to be observed. And not they onely are called by the name of the Civil Law, but also all the other statutes of Emperours. Now then, if that among these three welsprings of all Law, I prove the preeminence of the Laws of England to excel above the rest: I shall therewith prove the same Law to be good and effectual for the government of the kingdome. And further, if I do shew it to be as commodious for the wealth of the Realm, as the Civil Laws are for the wealth of the Empire,

qualis est legum civiliū pars non modica, quæ a Romanorum principibus in magnis voluminibus redigitur, & eorum auctoritate observari mādatur: Unde legis Civilis, ut cætera Imperatorū statuta, jam pars illa nomen sortita est. Si igitur in his tribus, quasi omnis juris fontibus, legis Angliæ præstantiam probaverim præfulgere, legem illam bonam esse & efficacem, ad regni illius regimen, etiam comprobavi. Deinde si eam, ad ejusdem regni utilitatem, ut leges civiles ad imperij bonum.

accommodam eſſe lucide oſtenderim, nedum tunc legem illam præſtantē ſed &, ut leges civiles, electam (ut tu optas) etiam patefeci. Igitur hæc duo tibi oſtendere ſatagens, ſic progredior.

then ſhall I make evidēt & plain not only ỳ this law is of much excellency, but alſo that it is an elect and choſen law, as well as the Civil laws are: which is the thing that you require. Wherefore to the proof and declaration of theſe two points, thus I proceed.

Chap. 16. *The Law of nature in all countries is all one.*

LEges Angliæ in his, quæ ipſæ ſāciūt legis naturæ ratione, non meliores pejoreſve ſunt in judiciis ſuis, quā in cōſimilib⁹ ſunt omnes leges cæterarum nationum. Quia, ut dicit *Philoſophus* 5. *Ethicorum: Jus naturale eſt, quod apud omnes homines*

THe Laws of England, in thoſe things, which they by force of the Law of nature do ratifie and eſtabliſh, are neither better nor worſe in their judgements, then the laws of all other nations are in the like caſes. For as Ariſtotle in the 5. book of his Moral Philoſophie ſaith: The Law of nature is that which among all people hath

hath like ſtrength and power, wherefore hereof to reaſon any longer it ſhall not availe. But now henceforth we will ſearch out what manner of Cuſtomes & Statutes there of England are. And firſt the qualite of thoſe cuſtomes we will conſider.

eandem habet potentiam, quare de ea amplius diſceptare non expedit. Sed quales ſunt Angliæ conſuetudines ſimiliter & ſtatuta, eſt a modo perſcrutādū, & primo conſuetudinū illarum viſitabimus qualitates.

Chap. 17. *The Cuſtomes of England are of moſt antient antiquity, practiſed and received of V. ſeveral Nations, from one to another, by ſucceſſion.*

THe Realm of England was firſt inhabited of the Britons, next after them the Romans had the rule of the land, and then again the Britons poſſeſſed it, after whom the Saxons invaded it, who changing the name thereof did for Britain call it England, af-

REgnū *Angliæ*, primo per *Britannos* inhabitatū eſt, deinde per *Romanos* regulatum, iterumq; per *Britannos*, ac deinde per *Saxones* poſſeſſum, qui nomen ejus ex *Britannia*, in *Angliam* mutaverūt: extunc

per *Danos* idē regnum parumper dominatum eſt, & iterum per *Saxones*, ſed finaliter per *Normannos*, quorum propago regnum illud obtinet in præſenti. Et in omnibus nationum harum & regum earū temporibus, regnum illud eiſdem, quibus jam regitur, conſuetudinibus continuè regulatum eſt. Quæ, ſi optimæ non extitiſſent, *aliquis regum illorum juſtitia, ratione, vel affectione* cōcitati eas mutaſſent, aut omnino deleviſſent, *& maxime Romani*, qui legibꝰ ſuis quaſi totum orbis reliquū judicabāt. Si-

ter then for a certain time the Danes had the dominion of the Realm, and then Saxons again, but laſt of all the Normans ſubdued it, whoſe diſcent continueth in the government of the kingdome at this preſent. And in all the times of theſe ſeveral natiōs and of their kings, this realm was ſtill ruled with the ſelf ſame cuſtomes, that it is now governed withall. Which, if they had not bēn right good, ſome of thoſe kings moved either with Juſtice, or with reaſon or affection, would have changed them, or elſe altogether abolished them, eſpecially the Romans, who did judge all the reſt of the world by their own laws. Likewiſe would other

other of the foresaid kings have done, which by the sword only possessing the realm of England, might by the like powers authority have extinguished the Laws thereof. And touching the antiquity of the same, neither are the Roman Civil laws, by so long cõtinuance of ancient times, confirmed, nor yet the Laws of the Venetiãs, wch, above all other are reported to be of most antiquity, forsomuch as their Iland in the beginning of the Britons was not then inhabited, as Rome then also unbuilded, neither the laws of any Paynim natiõ of the world, are of so old and ancient years: Wherfore the contrary is not to be said nor thought, but that the English customes

militer & alij regum prædictorũ, qui solùm gladio regnum Angliæ possiderunt, quò & potentia simili, ipsi, leges ejus exinanisse valuerũt. Neq; vero tantorum tẽporum curriculis, *leges civiles, in quantum Romanorum, inveteratæ sunt*, neque *Venetorum* leges, quæ super alias ãtiquitate divulgantur, quorum tum insula, in initio *Britonum*, inhabitata non fuit, sicut nec *Roma* cõdita, nec ullorũ mũdi regnorũ deicolarum leges tanto ævo inolitæ sunt: Quare non bonas, immo non optimas esse, *Anglorum* consuetudines,

ſicut non dicere, ita nec ſuſpicari fas eſt.

are very good, yea of all other the very beſt.

Chap. 18. *Here he ſheweth with what gravity Statutes are made in England.*

STatuta tunc Anglorũ, bona ſint necne, ſolum reſtat explorandum. Non enim emanant illa a principis ſolum voluntate, ut leges in regnis, quæ tantum regaliter gubernantur, ubi quandoque ſtatuta ita conſtituentis procurrant cõmodum ſingulare, quòd in ejus ſubditorũ ipſa redundant diſpendium, & jacturam: Quandoq; etiam inadvertẽtia principũ hujuſmodi, & ſibi conſulentium inertia, ipſa

NOw whether the ſtatutes of England be good or not, that onely remaineth to be diſcuſſed. For they proceed not only from the Princes pleaſure, as do the laws of thoſe kingdomes that are ruled onely by regal government, where ſometimes the ſtatutes do ſo procure the ſingular commodity of the maker, that they redound to the hinderance and damnage of his ſubiects: Sometimes alſo by the negligence and overſight of ſuch princes, and their ſleight regard, reſpecting onely their own commodities, they

are

are ſo unadviſedly made, that they are more worthy to have the name of diſorders, then of well ordered Laws: But ſtatutes cannot thus paſſe in England, forſomuch as they are made not only by the Princes pleaſure, but alſo by the aſſent of the whole Realm: ſo that of neceſſity they muſt procure the wealth of the people, and in no wiſe tend to their hinderance. And it cannot otherwiſe be thought but that they are repleniſhed with much wit and wiſdome, ſeeing they are ordained not by the device of one man alone, or of a hundred wiſe Counſellors onely, but of more then three hundred choſen men, much agreeing with the number of the ancient

tam inconſulte edũtur, qd. corruptelarum nomina potius, quã legum, illa merentur. Sed non ſic Angliæ ſtatuta oriri poſſunt, dum *nedum principis voluntate, ſed & totius regni conſenſu*, ipſa conduntur, quo populi læſurã illa efficere nequeunt, vel non eorum cõmodũ procurare. Prudentia, etiam & ſapientia neceſſario ipſa eſſe referta putandũ eſt, dum non unius, aut centũ ſolũ conſultorum virorũ prudentia, ſed pluſquã trecentorũ electorum hominum, quali numero olim *ſenatus Romanorum*, rege-

regebatur, ipſa edita ſunt, ut hii qui parliamẽti Angliæ formam, convocationis quoq; ejus ordinem & modum, noverunt, hæc diſtinctius referre norũt. Et ſi ſtatuta hæc, tanta ſolemnitate & prudentia edita, efficaciæ tantæ, quantæ conditorum cupiebat intentio, non eſſe contingant: concito reformari ipſa poſſunt, & non ſine cõmunitatis & procerum regni illiꝰ aſſẽſu, quali ipſa primitus emanarut: patẽt igitur jam tibi, *princeps*, legum angloꝝ ſpecies omnes. Earum quoq; qualitates, ut ſi bona

Senatours of Rome: as they that know the faſhion of the Parliament of England, and the order and manner of calling the ſame together, are able more diſtinctly to declare. And if it fortune theſe Statutes being deviſed with ſuch great ſolemnity and witte, not to fall out ſo effectually, as the intent of the makers did wiſh: they may be quickely reformed, but not without the aſſent of the commons, and ſtates of the Realm, by whoſe authority they were firſt deviſed: Thus moſt worthy Prince, you doe plainly underſtand all the kinds of the Lawes of England. And touching their qualities, as whether they be good

good or no, you shall be able to measure that, as wel by your own wit, as by comparing them with other lawes: And when ye shall find none in the whole world of like excellencie, you must of force grant them to be not onely good, but also on your behalfe most to be embraced.

ipsæ sint, metiri tu poteris prudentia tua, comparatione etiam aliarum legum: & cum nullam tantæ præstantiæ in orbe reperies, eas nedum bonas, sed tibi optabilissimas fore, necessario confiteberis.

Chap. 19. *Here he deviseth a means how to know the diversity, between the Civil Laws, and the Laws of* England.

One only doubt, wherwith your mind is troubled, remaineth now behind undiscussed. And that is this: whether as the civill lawes, so likewise the lawes of England, be fruitfull and effectual, these for the realm of England,

SOlum jam unum de his, quibus agitatur animo tuus, restat explanandum, viz. an, ut Civiles, ita & Anglorum leges, frugi sint & efficaces, istæ Angliæ regno, ut illæ impe-

tio,

rio, etiam & accommodæ judicare mereantur. *Comparativnes* vero, *Princeps*, ut te aliquãdo dixiſſe recolo, *odioſa reputantur*: quo eas aggredi non delector: tu, a[illegible] æqualis ſint ambæ leges meriti, unave altera celſius præconium mereatur, non ex meo judicio, ſed ex his, in quibus earum diffe[illegible]nt ſentẽtiæ, efficacius carpere poteris argumentum. Nam ubi conveniunt leges ambæ, æqualis laudis ipſæ ſunt, ſed in caſibus, ubi ipſæ diſſentiunt, præſtantioris legis præconia, digna penſatio-

as the other for the Empire, and whether they may worthily be judged fitte and meet. Comparisons, moſt noble Prince, (as I remember I heard you once ſay) are compted odious. Wherefore I am loth to meddle with them: but whether they be both of like worthyneſs, or that the one deſerveth an higher commendation then the other, hereof you may gather a pithier argument, out of thoſe points, wherein their ſentences do differ, then by my declaration. For where both the Laws do agree, the praiſe of them is equal. But in caſes where they diſagree, the worthier Law is moſt praiſe worthy.

thy. Wherefore we will now propound some such cases, to the intent you may indifferently ponder and weigh, whether of these doth most justly and better define the same: And first, we will put forth examples of cases of much weight.

one refulgent. Quare casus hujusmodi aliquos jn in mediũ proferemus, ut quæ legũ illarumeos justius meliusque definiat, æqua lance valeas põderare: & primo ex casibus maximi põderis, exempla proponamus.

Chap. 20. *The first case wherein the Civil laws, and the Laws of* England *do differ.*

IF they that have a matter of controversie depending before a Judge, come to the contestation of the suit upon the matter of the deed, which the Lawyers of England call the issue of the plea: the truth of such an issue, by the civil Laws, must be tryed by the deposition

SI coram Judice contẽdentes, ad litis perveniãt contestationem super materia facti, quam Legis Angliæ periti, *exitum placiti* appellant: Exitus hujusmodi veritas, per Leges Civiles, testium depositione pro-

Probari debet, in qua duo teſtes idõei ſufficiũt; Sed per leges angliæ *veritas illa, non, niſi* 12. *hominum de vicineto, ubi factum hujuſmodi ſupponitur, ſacramento, Judici conſtare poterit.* Quæritur igitur, quis horum duorum proceſſuum tam diverſorum, rationabilior cenſeri debeat & efficacior ad veritatem, quæ ſic quæritur, revelandam: Quia lex, quæ eam certius meliuſque oſtẽdere poteſt, præſtantior in hoc eſt lege altera quæ non tantæ efficaciæ eſt & virtutis; quare in hujus rei indagine ſic procedimus.

of witneſſes wherein two allowable witneſſes are ſufficient. But by the Laws of England, the truth of the matter cannot appeare evident to the Judge, without the oathes of twelve men neighbours to the place, where ſuch a deed is ſuppoſed to be done. Now therefore the queſtion is, whether of theſe two ſo divers proceedings ought to be eſteemed more reaſonable and effectual for the opening of the truth, which thus is ſought for. For the law that can more certainly and better ſhew the truth is in this behalfe of more excellency, then the other that is of leſſe efficacy and force, wherefore in the ſearch of this matter thus we proceed.

Here

Chap. 21. *Here are ſet forth the inconveniences proceeding of that Law, which no otherwiſe then by witneſſes admitteth trials.*

By the Civil laws, the party which in the iſſue holdeth the affirmative, muſt bring forth witneſſes, which he himſelfe at his own pleaſure ſhall name. But the negative cannot be proved directly, though indirectly it may. For the habilitie of him is thought to be very ſmall and weake, and his wit much leſſe, which among all the men that he knoweth, is not able to find two ſo void of conſcience and truth, which for dread, love, or profit, will not be ready to gainſay all truth. Such then may he produce for witneſſes on his ſide.

PEr leges Civiles, pars quæ in litis cõteſtationẽ affirmativã dicit, *teſtes* producere debet, quos ipſemet ad libitum ſuũ nominabit. Negativa autẽ probari nõ poteſt, n. directe, licet poſſit per obliquũ. Exilis quippe creditur eſſe potẽtiæ, minoris quoq; induſtriæ, qui de õnib⁹ quos noſcit hominib⁹ duos reperire nequit, ita cõſciẽtia & veritate vacuos, ut timore, amore, vel cõmodo, omni velint cõtrarire veritati. Hos poteſt tunc ipſe in teſtes producere in cauſa ſua.

Et si contra eos pars altera dicere velit, vel contra eorũ dicta, non semper continget, eos eorũ quoque mores aut facta apud contradicere volentẽ, agnosci, ut ex eorũ fœditate & vitijs, testes illi possint reprobari. Et dũ eorũ dicta affirmativã cõtineãt, nõ facile poterũt illa per circũstãtias aut obliqua alia improbari: Quis tũc poterit suorũ aut sui ipsius, sub lege tali, vivere securus, dũ cuilibet, sibi inimicari volẽti lex tale præstat subsidium? Et qui iniqui duo tam incauti sunt, quo facti, de quo ipsi examina-

And if the other party would object any thing against them, or their sayings, it chanceth not ever, that their and their cõditions & doings are known to the contrary party, so that by reason of their soul lives and vicious behaviour, such witnesses might be reproved. And while their sayings conteine the affirmative, it shall be very hard to reprove them by circumstances, or any other indirect meanes: who then shall be able to live in surety of his goods or of himself under such a law, that ministreth such aid to every busy body that lusteth to trouble another? And what 2. wicked mẽ are so unwary & uncircumspect, wch touching ꝑ deed, whereof they shall be

be examined in Judgment, will not, before they are called forth for witnesses, secretly imagine & devise a form and fashion thereof, & frame thereunto all circumstances, even such, as must needs have bin so, if the thing had bin true indeed? For the children of this world (saith the Lord) are wiser then the children of light. So the most wicked Jesabel brought forth 2. witnesses of the children of Belial in judgement against Nabot, whereby he lost his life, & King Achab her husband obtained the possession of the vineyard. So the most chaste matron Susanna should have died for adultrie by the witness of two old dotards being judges, if the Lord had not marvel-

buntur in initio, non, antequā in testes producātur, occulte fingant imaginem & figurā, componant quoq; eidē oēs circumstāntias, quales sibi fuissent, si illud in veritate constitisset? *Prudentiores namq;* ut dicit Dominus, *sunt filii hujus mundi quam filii lucis.* Sic *Jesabel* sceleratissima, testes duos, filios *Belial* contra *Nabot* in judicio produxit, quo ipse vitam perdidit; & *Achab* rex ejus vineā possidebat. Sic duorum senum etiam Judicum testimonio, mortua fuisset pro adulterio, uxor castissima

Suſanna, ſi non eam miraculoſe liberaſſet domin⁹ inexcogitabili prudentia, quam a natura non habuit puer junior nondum ætate provect⁹. Et ſi ipſos, depoſitione ſua varia, cõvicerat puer ille, eſſe falſarios, quis, niſi ſolũ dominus, noviſſe poterat eos in dictis ſuis taliter variaturos? dũ, non de arboris natura, ſub qua imputatum facinus fiebat, lex aliqua eos arctabat reminiſci. Quia teſtes ſceleris cujuſq; cõſiderare nõ putãtur omnia umbracula & cætera vicina illi facto, quæ ad aggravationem vel delouſly delibered her by a wonderful feat of prudẽce, which of nature the young child had not, being yet under age. And though the ſame child by their altering and doubling in their depoſitions did convict thẽ to be falſe wzetches, yet who (ſave onely the Lozd) could have known that in their ſayings they would thus have diſagreed? Seeing there was no Law that did moove them to have in remembzance what kind of trẽ it was, whereunder the fact was ſuppoſed to be done. Foz the witneſſes of every wicked dæd are not thought to conſider all circumſtances appertaining to the ſame, being ſuch as do nothing help to

the

the aggravation and detection of the fault. But while those wicked Judges, willingly swearing, did alter touching the kinds of trees, their own words proved them to be false varlets: Wherefore they worthily suffered the same punishment themselves.

You, also most gracious Prince, do know how that lately Master John Fringe, after that he had continued three years in the order of Priesthood, was compelled by the deposition of two wicked persons, which witnessed that he had, before he was made Priest, betrothed himself to a certain young woman, to forsake the holy order of Priesthood,

tectionē criminis illi⁹ minime operātur. Sed dum de arborū specieb⁹, Judices illi nequā ultro deponētes, variabant, eorum dicta ipsos veritatis fuisse prævaricatores demōstrabant: quo & talionis pœnā merito incurrerunt. Nosti & tu, *Princeps divine*, qualiter jam tardè *Magister Iohannes Fringe*, qui, postquam annis tribus sacerdotali functus est officio, duorum iniquorum depositione qui eum antea juvenculam quandam affidasse testati sunt, sacrū presbyteratus ordinē relinquere cōpulsus est,

& matrimoniū cum fœmina illa consummare. Cū qua, postquam annis 14. moratus, sobolē septimā suscitaverat, demū de crimine læsæ majestatis in tuā celsitudinem conjurato convictus, subornatos fuisse testes illos, & falsū dixisse testimonium, in mortis suæ articulo, coram omni populo, fassus est. Qualiter & sæpe pervertī judicia, falsorum testium medio, etiam sub optimis judicibus, non est tibi inauditum, nec incognitum mundo, dum scelus illud (proh dolor) creberrime committatur.

and to marry the same woman. With whom when he had lived fourteen years, and had begotten seven children of her, at the last being convicted of Treason, conspired against your Highness, he confessed before all the people, even at the very point of death, that those witnesses were hired, and that their depositions were false. And thus many times are judgements perverted by the mean of false witnesses, yea, and that under the very best Judges, as unto you it is not unheard, nor to the world unknown, while this wickedness (the more is the pitie) is often committed.

¶ Chap.

¶ Chap. 22. *Of the crueltie of Rackings.*

THerefore the law of France, in offences criminal, wherupon death dependeth, is not content to convict the party accused by witnesses lest by the testimony of false persons, innocēt bloud should be condemned. But that law choseth rather to torment such offenders with racking, untill they themselves confess their own fault, rather then by the deposition of witnesses, which many times through wicked affections, & sometimes by the suborнation of evil men, are moved to perjurie. Upon this, and such like cautels and respects, offenders and suspect persons are in that realm with so many kinds of rackings

NOn igitur cōtenta est lex *Francie* in criminalibus, ubi mors imminet, rerū testibus convincere, ne falsidicorum testimonio sāguis innocēs condemnetur. Sed mavult lex illa reos tales *torturis* cruciari, quousq; ipsi eorum reatum cōfiteantur, quam testium depositione, qui sæpe passionibus iniquis, & quandoq; suborнatione malorum, ad perjuria stimulantur. Quali cautione & astutia, criminosi etiam & de criminibus suspecti, tot torturarum in regno illo generibus

affliguntur, quod fastidit calamus ea literis designare. Quidam vero equuleis extenduntur, quo eorum rumpuntur nervi,& venæ in sanguinis fluēta prorumpunt: Quorundam vero, diversorum ponderum pendulis dissolvuntur compagines & junctūræ: Et quorundam gaggantur ora, usque dum per illa, tot aquarum infundantur fluenta, ut ipsorum venter montis tumescat more, quo tunc venter ille, fossorio vel simili percussus instrumēto, per os aquam illā evomat, ad instar

tormented, that my pen abhorreth to put them in writing. For some are stretched out upon a horse in such wise, that their sinews break and their vains gushe out with streams of bloud: Again, other some have divers great weights hanged at their fæt, whereby their lymmes and joynts are dissolved and unlossed: Some also have their mouthes so long gagged open till such aboundance of water be powred in, that their belly swelleth like a hill or a tun, to the intent that then the belly being pierced with some boring instrument, the water may issue a spout out thereat, and at the mouth streamwise, not much unlike a Whale,

Whale, which when he hath supped up, and swallowed down a great quantity of Sea water, with herrings and other small fishes, guiheth out the same water again, as high as the top of any Pine apple tree. My pen is both weary and ashamed to rehearse the outragiousnes of torments devised in this behalf: For the number of them is so great, that it can skant well be noted in a whole skinne of parchement. Moreover the Civil Laws, for want of witnesses, do fetch out the truth by such rackings: And so doe divers other Countries too. But who is so hard hearted, which being once

Balenæ, quæ, cum halecibus & aliis pisciculis mare absorbuit, aquam despumat ad altitudinem arboris Pini. Piget (proh pudor) jam penna exquisitorum ad hæc cruciatuũ enarrare immania. Nam eorum variatus numerus vix notari poterit magna in membrana. Leges etiam ipsæ Civiles, deficiente testium copia, in criminalib⁹, veritatem consimilibus extorquent tormentis: Qualiter & faciunt etiam quàm plurima Regna. Sed quis tam duri animi est, qui semel

ab atroci tanto torculari laxatus, non potiùs innocẽs ille omnia fateretur ſcelerum genera, quàm acerbitatem ſic experti iterum ſubire tormenti, & non ſemel mori mallet, dum mors ſit ultimum terribilium, quam toties occidi, & totidem gehennales furias morte amariores ſuſtinere? Et nonne, *princeps*, tu noviſti criminoſum quendam qui inter tormenta hujuſmodi, militem nobilem, probum, & fidelem de proditione quadam, ſuper qua, ut aſſeruit, ipſi duo inſimul conjurarunt,

releaſed out of ſo cruel a Rack, though he be innocent and faultleſs, would not yet rather accuſe himſelf of all kinds of offences, then again to commit himſelf to the intollerable cruelty of the torment once proved: and had not rather die at once (ſeeing death is the end of all miſeries) then ſo often to be killed, and to ſuſtain ſo many helliſh furies painfuller then death it ſelf? And did not you, moſt worthy Prince, know a certain offender, which in ſuch torments accuſed a worſhippfull, yea, a right good and faithfull Knight of Treaſon, wherein, as he ſaid, they two had conſpired together, which

which treason, he himself being released from the rack, afterward attempted and accomplished thereby to acquit himself from coming to the torture again. But at the last, by mean of those torments being so maimed in his body, that thereby he was brought in despair of his life, and thereupon receiving his bowsel, he then swore by the same body of the Lord, and by the death which he believed that he should forthwith die, that the said knight was innocent and guiltless in all things whereof he had accused him, howbeit the pains, wherein he was at the time of that his accusation, he said, were so extreme, that rather then he accusare, qd & constanter postmodum ipse fecit, a torturis illis relaxatus, ne iterum eadē tormēta ipsa ipse subiret. Sed demum, cum ex pœnis illis læsus usq; ad mortis articulum infirmaretur, ultimū quoq; viaticum, christi videlicet corpꝰ sumpsisset: Juravit tunc super corpus illud, & per mortē, quā tūc protinus credidit se passurum, militem illū innocentē fuisse & immunem de omnibus in quibus eum accusavit: tamen ait pœnas, in quibus ipse tempore delationis suæ fuerat, ita atroces exitisse, qd prius-

priuſquã eas iterũ experiretur, etiã eũdem militẽ ille iterum accuſaret, ſimiliter & patrem proprium, licet tunc in mortis limine, quam non credidit ſe poſſe evadere, fuerit cõſtitutus, nec vero, ipſe mortem, quã tunc metuit, evaſit. Sed demum ſuſpenſus, tempore mortis ſuæ ipſum militem purgavit ab omni crimine, de quo dudum defamavit. Taliter, proh dolor, & quàm plures alii miſeri faciunt, non veritatis cauſa, ſed ſolum urgentib⁹ torturis arctati: quid tunc certitudinis reſultat, ex confeſſionibus tali-

would feel the ſame again, he would not ſtick to accuſe the ſaid Knight again, yea, and his own Father too, This he ſaid, being then at the very point of death, which he believed he could not then eſcape, no, nor he eſcaped not the death of which he then feared. But afterward being hanged, at the time of his death, he cleared the ſaid Knight of all crimes whereof before he had defamed him. Thus (O pittifull caſe) doe many other wretches, not for the truths ſake, but forced thereunto by the extremity of torments. And what certainty then can ariſe of the confeſſions of miſerable tormented perſons?

But

But if some innocent body, having his minde fixed upon eternal salvation, would in such a Babylonical Fornace, with the three Children bless and magnifie the LORD, and not lie to the damnation of his own soul, in that the Judge pronounceth him unguilty, doth not that Judge by the self-same judgement judge himself guilty of all the cruelty and pains, wherewith he hath tormented the innocent? O how cruell is such a Law, which in that it can not condemn the silly innocent, condemneth the Judge? Surely such a custome is not to be accounted a Law, but rather the high

ter compressorum? Cæterum si innocẽs aliquis non immemor salutis æternæ in hujusmodi Babylonis fornace, cum tribus pueris benedicat domino, nec mentiri velit in perniciem animæ suæ, quo judex eum pronunciat innocentẽ, nõne eodẽ judicio, Judex ille, seipsum reum judicat omnis savitiæ & pœnarum, quibus innocentem afflixit? O quã crudelis est lex talis, quæ dum innocentem dampnare nequit, judicẽ ipsa cõdemnat? Vere non lex ritus talis esse perhibetur, sed potius semita ipsa est ad

gehen-

gehennam. O judex quibus in Scholis didiciſti, te præſentem exhibere, dum pœnas luit reus? Executiões quippe judiciorum in criminoſos, per ignobiles fieri convenit: Nam earum actores, infames ſolent eſſe ipſo facto, quo & ipſi deinde ad judicialem apicem redduntur indigni: non enim per angelos, ſed per dæmones exequi facit dominus judicia ſua reddita in damnatos. Nec revera in purgatorio cruciant animas, quãvis prædeſtinatas ad gloriam angeli boni, ſed mali. Maligni etiam homines ſunt per

way to the Devil. O Judge, in what School haſt thou learned to be preſent while the offendor is tormented? For the executions of judgments upon offenders ought to be done by mẽ of baſe degree: the doers whereof do purchaſe to themſelves preſent infamy by the deed doing, inſomuch that ever after they are diſabled from the preferment of a Judge: neither doth the Lord God execute his judgments, pronounced againſt the damned by angels, but by devils. Yea, and in Purgatory the ſouls there remaining, though they be predeſtinate to glory, yet are they not tormented with good angels, but of evil. Thoſe alſo are evil and wicked men by whom the

the Lord in this world doth minister to wretched sinners deserved punishment. For, when God said in the two and twentieth Chapter of the third book of Kings: Who shall deceive Achab? It was an evil spirit that answered: I will be a lying spirit in the mouth of all his prophets. For it becometh not a good spirit to take upon him the execution of such things, though this judgement proceeded from the Lord, that Achab should be deceived by a lie. But the Judge peradventure will say: I with mine own hands did nothing in these torments. But what differeth it, whether one be a doer with his own hands, or else be present

quos dominus in hoc mundo miseris tribuit malum pœnæ. Nam, cum dixerat Deus iij. Regum in Capitulo vicesimo secundo: *Quis decipiet mihi Achab?* malus erat spiritus, ille, qui respondit: *Ego ero spiritus mendax in ore omnium Prophetarum ejus.* Non enim decuit spiritum bonum exequi talia, licet a domino prodiit judicium, quod *Achab* mendacio deciperetur. Sed dicet Judex forsan: Ego nihil egi manibus meis in cruciatibus istis. Sed quid refert propriis facere manibus, an

præ-

præſentem eſſe, & quod factum eſt, mandato ſuo iterum atque iterum aggravare: Solum magiſter navis eſt qui eam ducit ad portum, licet ejus mandato alii agitent proram. Credo quod vulnus, quo ſauciatur animus judicis pœnas hujuſmodi infligentis, nunquam in cicatricem veniet, maxime dum recolit acerbitatem pœnarum miſeri ſic afflicti.

at the doing, and the thing that is done to exaſperate it by his commandment. It is onely the Maſter of the ſhip that bringeth it to the Haven, though by his commandement another be the ſteereſman, I believe that the wound wherewith the minde of the Judge thus tormenting any man is plagued, will never be healed again, eſpecially while he remembreth the extremity of the pains ſuſtained by the poor wretch in thoſe miſerable torments.

Chap. 23. *Here he ſheweth that the Civil Law oft faileth in doing of Juſtice.*

PRæterea, *ſi ex contractibus, il-*

MOreover, if by reaſon of bargaining, or by ſuffe-

suffering of injuries, or by Title of inheritance, right doe accrew to man, to plead in judgement: If there be no witnesses, or if such as were witnesses be dead, the Plaintiffe must neds let his Action fall, except he be able to prove his right by inevitable conjectures, which is seldome seen. Wherefore concerning Lordships, and other possessions ruled by the Civil Law, And in all Actions falling under the same Law, the Actions of the Plaintiffe, for want of witnesses, many times are choaked, so that scant the half part of them attaineth to the desired

latisve injuriis, vel hæreditatis titulo, jus accreverit homini agendi in judicio: si testes non fuerint, vel, si qui fuerint, moriantur, succumbet ipse agens in causa sua, nisi jus suũ probare valeat inevitabilibus conjecturis, qd facere crebro non contingit. Quare de dominiis, & aliis possessionib⁹ jure civili regulatis, similiter & in omnibus actionibus cadentibus sub eodẽ jure, *actiones agentium* pro defectu testium quàm pluries suffocantur, ita quod earum vix pars media optatum finem sortiatur.

tur. Qualis tunc eſt lex hujuſmodi, quæ injuratis taliter deficit in juſtitia reddenda? dubio an juſta vocari meretur, quia in eadem lege ſcribitur quod *Juſtitia unicuique tribuit quod ſuum eſt*; quod non faciat lex talis.

end. What manner of law then is this, which to them that ſuſtain wrong thus faileth in yielding Juſtice? I doubt whether it deſerveth to be called a juſt Law, becauſe in the ſame Law it is written, that Juſtice rendreth to every man that which is his own, But this cannot ſuch a Law do.

Chap. 24. *Here he declareth, how Counties are divided, and Sheriffs choſen.*

EXpoſita jã forma, qua leges Civiles de veritate facti in Judicio deducti judicem erudiunt, ſupereſt ut *modum, quo leges Angliæ hujuſmodi facti veritatem*, etiam doceamus.

NOw that we have opened, after what manner the Civil Laws do inform a Judge of the truth of a matter brought into judgement, it is conſequent to declare by what means the Laws of England do boult out the truth of ſuch a matter.

For

For the orders of both the Laws being laid together, the qualities of them both will more plainly appear: for so much as the Philosopher saith, that contraries, placed one by another, will shew themselves more evidently. But herein, after the manner of Orators, in stead of a Proheme, it shall not be amisse, that we open certain things before, the knowledge whereof will give light to things which hereafter shall come in talke, wherefore this we doe proceed. The Realm of England is divided into Counties, as the Realm of France is into Bayliwicks, so that in England there is no place

Nam ambarum legum formulis contigue positis, qualitates carendum lucidius eminebunt: cum dicat Philosophus, quod *opposita juxta se posita magis apparent.* Sed in hoc, Oratorum more (Prohemii loco) quædam prænarrare congruet, quorum agnitione, deinde tractanda clarius patere queant, quare sic procedimus. Regnum Angliæ per *Comitatus*, ut regnum Franciæ per *Ballivatus*, distinguitur, ita ut non sit locus in Anglia, qui non sit infra

corpus alicujus comitatus. Comitatus quoque dividuntur in *Hundreda*, quæ alicubi *Wapentagia* nuncupantur. Hundreda verò dividuntur per *Villas*, sub quarum appellatione continentur & *Burgi atque Civitates*. Villarum etenim metæ, non muris, ædificiis, aut stratis terminantur, sed agrorum ambitibus, territoriis magis, *Hamiletis* quibusda & multis aliis, sicut aquarum, boscorum & vastorum terminis, quæ jam non expedit nominibus designare, quia vix in Anglia est locus aliquis,

that is not within the body of some County. Counties also are devided into Hundreds, which somewhere are called Wapentages. And Hundreds are devided into Villages, under which appellation are conteined Borrows, and Cities. For the bounder of Villages are not contained within the circuit of Walles, Buildinges, or Streets, but within the compass of Fields, great Territories, certaine Hamletts, and many other, as of Waters, Woods, and waste Grounds, which it is not need full now to set forth by their names: because that in England there is skant any place

whic

which is not contained within the compass of Villages, though certain Priviledged places within Villages, are supposed to be no parcel of the same Villages. Moreover in every Countie there is one certain Officer called the Kings Sheriffe, which among other duties belonging to his Office, putteth in execution all the commandements and judgements of the kings courts, that are to be executed within his counties: His office endureth but for one year, so that after the expiration of the year, he may not minister in that Office, Neither shall he, within two years next ensuing, be admitted to the same Office again.

qui non infra villarum ambitus contineatur, licet privilegiati loci quidam infra villas de eisdem villis pars esse non censentur. Praeterea in quolibet comitatu est officiarius quidam unus, *legis vicecomes* appellatus, qui inter cætera sui Officii ministeria omnium mandata & judicia curiarum regis in comitatu suo exequenda, exequitur, *cujus officium annale est*, quòd ei post annum, in eodem ministrare non licet, *nec duobus* tunc sequentibus annis ad idem officium reassumetur. Officiatus

arius iſte ſic eligitur. Quolibet ano in *craſtino animarum*, conveniunt in ſcaccario regis omnes conſiliarii ejus tam domini Spirituales & temporales, quam alii oēs juſticiarii, omnes Barones de ſcaccario, Clericus rotulorum, & quidā alii officiarii, ubi hii oēs communi aſſēſu, nomināt de quolibet comitatu tres milites vel armigeros, quos inter cæteros ejuſdem comitatus ipſi opinātur melioris eſſe diſpoſitionis & famæ, & ad officium vicecomitis cōitatus illius melius diſpoſitos: ex quibus Rex

This Officer is thus choſen. Every year, the morrow after All Souls day, all the Kings Counſellors meet together in the Kings Exchequer, as well the Lords Spiritual and Temporal, as all other Juſtices, all the Barons of the Exchequer, the Maſter of the Rolles, and certain other Officers, where all theſe with one common aſſent do name of every Countie three Knights or Eſquires, whom among other of the ſame Countie they take to be of good diſpoſition & fame, and beſt diſpoſed to the Office of Sheriffe of that Countie: Of the which three the Kin

cho-

chooſeth one, whom, by his Letters Patents, he appointeth Sheriffe of the County, that he is choſen of, for the year then following: But he before he receive his Patent, ſhall ſwear upon the holy Goſpel, among other Articles, that he ſhall well and faithfully and indifferently exercile and doe his office all that year, and that he ſhall receive or take nothing of any other man then the King, by colour or mean of his office.

These things being thus now præſuppoſed, let us proceed to the ſearch of thoſe things that we ſeek for.

unum tantũ eligit, quem per literas ſuas patentes conſtituit Vicecomitẽ comitatus, de quo eligitur pro anno tunc ſequente: ſed ipſe, antequam literas illas recipiat, jurabit ſuper ſancta dei Evangelia, inter articulos alios, quod bene fideliter & indifferenter exercebit & faciet officium ſuũ toto anno illo, neq; aliquid recipiet colore aut cauſa officii ſui, ab aliquo alio quam a rege.

His jam ſic præſuppoſitis, ad eorũ, quæ quærimus, indaginem procedamus.

Chap. 25. ¶ *How Jurors muſt be choſen and ſworn.*

QUotieſcunque contendentes in curia regis Angliæ, ad exitū placiti ſuper materia facti devenerint, concito Juſticiarii per breve Regis ſcribūt vicecomiti comitatus in quo factū illud fieri ſupponitur, qd ipſe venire faciat coram eiſdem Juſticiariis, ad certū diē per eos limitatum, *duodecim probos & legales homines*, de vicineto, ubi illud factū ſupponitur: qui neutrā partiū ſic placitantiū ulla affinitate attingūt, ad recognoſcendū ſuper eorum ſacramēta, ſi factum illud factū fuerit, ſi-

AS oft as ſuters in the courts of the King of England, are come to the iſſue of the Writ upon the matter of the fact, forthwith the Juſtices by vertue of the Writ wait, do write unto the Sheriff of the Countie, wherein the deed is ſuppoſed to be done, that he do cauſe to come before the ſame Juſtices at a certain day by them limitted, xii. good and lawfull men, neighbours to the place where the fact is ſuppoſed to be done: the ſame to be ſuch as be of no kin to either of the pleaders, to the end that by their oaths it may certainly be known, whether the deed were done as the one party affirmeth,

nieth, or elſe as the other party denieth. Upon the day aforeſaid, the Sheriff ſhall return the ſaid Writ before the ſame Juſtices, together with the pannel of their names whieh he hereunto hath ſummoned: When they are come, either party may refuſe them, alleaging that the Sheriff hath made that pannel favourably for the other party, of perſons not indifferent: Which exception, if it be found true by the oath of two men of the ſame pannel choſen thereupon by the Juſtices, that pannel ſhall immediatly be quaſhed: and then the Juſtices ſhall write to the Coro-

cut una eorũdē partiũ dicit: vel non, ſicut altera pars negat. Quo adveniēte die, vicecōes returnabit breve prædict' corā eiſdē Juſticiariis, una cũ panello nominũ eorum, quos ipſe ad hoc fūmonit; quas (ſi venerint) utraq; pars recuſare poterit, dicēdo qd vicec' panellũ illud favorabiliter fecit pro parte altera, vz. de perſōis minus indifferētibus Quæ exceptio, ſi cōperta fuerit vera per ſacramētum duorum hominũ de eodē panello ad hoc per Juſticiariũ electorum mox panellum illud quaſſabitur, & Juſticiarii tunc ſcribent

Coronatorib⁹ ejuſdē cōitat⁹ qd ipſi novū faciāt panellum. Qd eū fecerint, ſi & illud cōſimiliter repertū fuerit viciatū, etiā & illud quaſſabitur: Et tūc Juſtic' eligēt *duos de clericis curiæ illius*, vel alios de eodē comitatu, qui in præſentia curiæ per eorū ſacramēta faciēt indifferens panellū, qd deinde per nullā partium illarum calumniabitur: Sed cum venerint ſic impanellati in curia, quælibet partiū *excipere poteſt* cōtra perſonam cujuſcunq; eorum, ſicut & poteſt in omni caſu & omni tēpore quo aliquis qualitercūque

roners of the ſame county, that they ſhall make a new panel. Which when they have done, if it be likewiſe found faulty, it ſhall alſo be quaſſed: And then the Juſtices ſhall elect and chuſe two of the Clerks of the ſame court, or other of the ſame County, which in the preſence of the Court upon their Oaths ſhall make an indifferent pannel, which by neither of the parties ſhall be challenged; Howbeit, when the men ſo impannelled are come into the court, either of the parties may make exceptions againſt the perſon of any of them, as he may alſo do in all caſes and at all times, when any man by any means impa-

impannelled shall appear to be swoꝛn in the court upon the truth of such an issue: saying, that the person impannelled is cousin oꝛ allied to the other party, oꝛ by any kind of amity so knit unto him that he is not indifferent to declare the truth between them: and of these exceptions there are so many kinds and soꝛts, that they cannot be in few woꝛds rehearsed. Whereof if any one be found true, then shall not he be swoꝛn, against whom the exception is pꝛopoſed, but his name shall be cancelled in the parnel. So also shall be done of all the names of the persons impannelled until xii. of them so indifferent be swoꝛn, that

impanellat⁹, cõparuerit in curiâ sup veritate exit⁹ hujusmodi juratur⁹, dicendo, qd impanellatus ille est cõsanguineus, vel affinis parti alteri, vel amicitia quacunq; tali ꝛbi cõjũct⁹, qd *indifferens ipse non est* ostẽdere int' eos veritatẽ, quarũ exceptiõũ tot sũt genera & species, qd nõ licet eas brevi explicare sermone. Quarũ si aliqua repta fuerit vera, nõ tũc jurabit' ille cõtra quẽ exceptio illa proponitur, sed cãcellabitur nomẽ ej⁹ in panello. Sic quoq; fiet de omnib⁹ nominib⁹ impanellatorũ, quousq; xij. eorum jurẽtur ita indifferentes,

quod

qd verſus eos neutra partiū habeat aliquā materiam exceptionis: horū autē xij. ad minus iiij. erunt *de hundredo*, ubi villa in qua factū de quo cōtenditur, fieri ſuppōitur, ſita eſt: & *qualibet juratorum hujuſmodi habebit terras vel redditus pro termino vitæ ſuæ, ad minus ad valorem annuum xl.* s. Et hic ordo obſervatur in omnib⁹ actiōib⁹ & cauſis criminalib⁹, realib⁹, & perſōalib⁹ præterquam ubi dāna vel debitū in perſōalib⁹ nō excedāt xl. marcas monetæ Anglicæ, quia tunc non requiritur, qd juratores in actionib⁹ hujuſmodi tā-

neyther party can have againſt them any matter of exception or challenge: Alſo of theſe xii. iiii. at the leaſt ſhall be of the hundred, where the village ſtandeth, wherein the fact whereupon the ſuit riſeth, is ſuppoſed to be done: And every ſuch Juror ſhall have lands or revenues for term of life, at the leaſt, to the yearly value of xl. s. And this order is obſerved & kept in all actions and cauſes criminal, real, and perſonall, ſaving where the dammages or debt in actions perſonal, exceedeth not the ſum of xl. marks of Engliſh money: For then it is not requiſite, that Jurors in ſuch actions, ſhall be able to diſpend

dispend so much. Yet they shall have land or rents to a competent value after the discretion of the Justices, Otherwise they shall not be sworn, lest for need and povertie, such Jurors might easily be corrupt and suborned. And if by such exceptions so many Jurors names be cancelled in the pannel, that there remaineth not a sufficient number to make thereof a Jury, then the Sheriffe by the Kings Writ, shall be commanded to adjoyne moe Jurors, which thing may often be done, so that for lack of Jurors, the inquisition of the truth upon such a plea shall not remain

tũ expẽdere possint. Habebunt tamẽ terrã vel redditũ, ad valorẽ cõpetẽtem, juxta discretiõẽ justiciariorũ, alioquin ipsi minime jurabũtur, ne p̃ inediã & paupertatẽ juratorũ hujusmodi, de facili valeãt corrumpi aut subornari. Et si per tales exceptiões, tot juratorũ nomina in panello cãcellẽ, qd nõ remaneat numer⁹ sufficiens ad faciẽdam inde juratã, tunc mãdabitur vicecomiti per breve regis quod ipse apponat plures juratores, qd & sæpi⁹ fieri potest, ita qd inquisitio veritatis super exitu placiti nõ remanebit ob defectũ juratorũ.

Et

Et hæc est forma, qualit' juratores & veritatis hujusmodi inquisitores eligi debēt in curia regis similit' & jurari: quare quomodo ipsi de veritate illa dicēda onerari debēt & informari, jam restat ut quæramus.

And this is the form, how jurors, and inquisitors of truth ought to be chosen in the kings court, and likewise to be sworn: Wherefore, how they must be charged and informed of the uttering of the same truth, this now resteth to be discussed.

¶ Chap. 26. *How Jurors ought to be informed by Evidences and Witnesses.*

Juratis demū in forma prædict' xij probis & legalib⁹ hominib⁹ habētib⁹ ultra mobilia sua possessiones, ut prædicit' sufficiētes, unde eorū statū ipsi cōtinere poterūt, & nulli partū suspectis nec invisis, sed eisdē vicinis leget' in ānglico corā eis p curia, *tot' record' & processus placiti,*

The twelve good & lawful men being at the last sworn in forme aforesaid, having besids their moveables, sufficient possessiōs as afore is declared, wherby they may be able to maintain their own states, & being to neither party suspect or hated, but neighbors to the both, then shall be read before them in English by the Court, all the record

cord and proceſs of the plea depending betwixt the parties, with a plain declaratiõ of ꝑ iſſue of the plea, touching the truth whereof thoſe ſworn men ſhall certifie the Court: which things being done, either party by himſelf or his Counſellors in the preſence of the Court, ſhall utter and open to the ſaid ſworn men, all ꝯ ſingular matters and Evidences, whereby he thinketh he may beſt informe them of the truth of the iſſue ſo impleaded. And then may either party being before the ſame Juſtices and ſworn men, all and ſingular ſuch witneſſes on his behalf, as he will produce. Who by the Juſtices being charged upon the holy Goſpel of God, ſhall teſtify quod pendent inter partes ac dilucide exponetur eis exitus placiti, de cuj⁹ veritate jurati illi curiã certificabũt; quibus peractis, utraq; partiũ per ſe vel cõſiliarios ſuos, in præſẽtia curiæ, referet & manifeſtabit eiſdẽ juratis omnes & ſingulas *materias & evidentias*, quib⁹ eos docere ſe poſſe credit veritatẽ exit⁹ taliter placitati. Et tunc adducere poteſt utraque pars corã eiſdẽ juſticiariis & juratis, omnes & ſingulos teſtes quos pro parte ſua, ipſa producere velit, qui ſup *ſanctã Dei Evangelia*, p Juſticiarios onerati, teſti-

testificabuntur omnia quæ cognoscunt *probantia veritatem facti*, de quo partes contendũt. Et si necessitas exegerit, dividatur testes hujusmodi, donec ipsi deposuerint quicquid velint, ita qd dictum uni⁹, nõ docebit aut cõcitabit eorum alĩũ ad cõsimiliter testificandum, Quib⁹ consummatis postquam juratores illi deinde ad eorũ libitũ supra veritatẽ exit⁹ hujusmodi, deliberatione, quantam ipsi optabant, colloquium habuerint: *in custodia ministrorum curiæ*, in loco eis ad hoc assignato, ne interim eos aliqui subornare valeant,

tifie all things proving the truth of the fact, whereupon the parties contend. And if need so require, those witnesses shall be severed and divided, till they have deposed all that they will, so that the saying of one shall not move or provoke another to testifie the like. The premisses being done, then after that those Jurors have had talk at their pleasure, upon the truth of that issue with as much deliberation as themselves shall require, in the keeping of the Ministers of the Court, within a place to them for the same purpose assigned, to the intent that no man in the mean time may corrupt them, they shall return

return into the Court, and certifie the Justices upon the veritie of the issue so joyned, in the presence of both the parties, (if they will be there) and specially of the Plaintiff. The report of which Jurors, by the laws of England, is called a verdict, by the which word is meant a true report, or a report of the truth: And then according to the quality of that verdict the Justices shall frame and form their judgement. Notwithstanding, if the other party, against whom the verdict is given, complain, that he is thereby unjustly grieved, then the same party may sue a writ of attaint against those Jurors, and against the party that hath prevailed

revenient illi in curiam, & certificabunt justiciarios super veritate exitus sic juncti, in præsentia partium (si interesse velint) & maxime petentis. Quorũ juratorũ *dictum* p leges Angliæ, *veredictum* nuncupatur, & tunc secundũ hujusmodi veredicti qualitatẽ, justiciarii reddẽt & formabunt judicium suum. Tamẽ, si pars altera, cõtra quã veredictum hujusmodi prolatũ est, cõqueratur se per illud injuste esse gravatũ, persequi tũc potest pars illa, versus juratores illos, & versus partem quæ obtinuit, breve de attinctu.

Vir-

Virtute cujus, si cõpertũ fuerit per *sacramentum xxiiii. hominum*, in forma prænotata returnatorũ, electorũ & juratorum, qui multo majora habebũt patrimonia, quam juratores primi, quod iidẽ primi juratores *falsum fecerunt sacramentum*, corpora eorundẽ primorum juratorũ prisonæ regis cõmittẽtur, bona eorũ confiscabũtur, ac omnes possessiones eorundẽ *in manus reges capientur*, domus quoque eorum & ædificia prosternẽtur, bosci succidentur, & prata arabuntur: ipsi etiam juratores primi

By force of which Writ, if it shall be found by the oath of twenty and four men, in form aforesaid returned, elect, and sworn, which shall be men of much greater livings, then the first Jurors were, that the same first Jurors have made a false oath, then the bodies of the same first Jurors shall be committed to the Kings prison, their goods shall be confiscate, and all their possessions shall be seised into the Kings hands, their Houses also and Buildings shall be rased and thrown down, their Woods felled, and their Meadow grounds plowed. And also the same first Jurors

rors shall for ever after be noted for infamed persons, and shall in no place be received to testifie the truth: And the party, which in the former plea had the overthrow, shall be restored to all things, which by occasion thereof he hath lost. Who then, though he regard not his soules health, yet for fear of so great punishment, and for shame of so great infamy, would not upon his oath declare the truth? And if one man peradventure have so little respect to his honour or estimation, yet some of so many Jurors will not neglect their own good fame, nor will not thorough their own default, suffer themselves

ex tunc infames erunt, *nec alicubi recipientur in testimonium veritatis*: & pars, quæ succubuit in priori placito, restituetur ad omnia, quæ ipse perdidit occasione ejus. Quis tunc (etsi immemor salutis animæ suæ fuerit) non formidine tãtæ pœnæ, & verecundia tantæ infamiæ, veritatem non diceret sic juratus? & si unus forsan tãtus sui honoris prodigus esse non pepercerit, aliqui tamen juratorum tantorum famã suam non negligent, neq; bona & possessiones suas taliter distrahi patien-

tur, propria culpa ſua. *Nonne jam, hic ordo revelandi veritatem, potior & efficacior eſt, quam eſt proceſſus, qualem pariunt Civiles leges?* Non hic pereunt cauſæ aut jus alicujus, per mortem aut ob defectum teſtium, non hic producuntur teſtes ignoti, conducticii, pauperes, vagi, inconſtantes, aut quorum cõditiones vel malitiæ ignorantur. Vicini ſunt teſtes iſti, de propriis vivere potentes, famæ integræ, & opinionis illaſæ, non per partem in curiam ducti, ſed per officiarium nobilem & in-

thus to be ſpoiled of their goods and poſſeſſions. Is not this order now for the boulting out of the truth better and more effectual, then the proceſſe which the Civil laws doe procure? Here no cauſe, for no mans right quaileth through death or for want of witneſſe: Here are not brought forth unknown witneſſes, hyred perſons, poor men, bagabonds, unconſtant people, or ſuch, whoſe condition and naughtineſs is unknown. Theſe witneſſes are neighbours, able to live of their own, of good name and fame, of honeſt report, not brought into the Court by the party, but by a worſhipfull and indifferent

ferent Officer chosen, and so compelled to come before the Judge. These know all, that the witnesses are able to depose, and they know also the constancy and unconstancy of the witnesses, and what report goeth upon them. And what will ye have more? Doubtlesse, there is nothing, that may disclose the truth of any doubt falling in contention, which can in any wise be hid from such Jurors, so that it be possible for the same to come to mans knowledge.

differentē electi, & coram judice venire compulsi. Isti omnia sciunt, quæ testes deponere norunt, & isti testium productorum agnoscunt constantias, incōstātiasq; & famā. Quid ultra? verè nihil est, quod veritatē dubii, de quo cōtendi poterit, detegere valebit, quod juratoribus talibus latere quomodolibet potest aut ignorari, dummodo possibile sit, illud venire posse in agnitionem humanam.

¶ Chap. 27. *Here he sheweth, how causes criminal are determined in England.*

SEd quomodo in criminalibus leges Angliæ ſcrutãtur veritatem etiã rimare perneceſſariũ eſt, ut & in eis plenarie agnita ambarum legũ forma, quæ earũ efficacius latentem revelat veritatẽ certius agnoſcamus. Si reus quiſpiam de *felonia aut proditione in Anglia rettatus, crimen ſuum coram judicibus dedicat*, mox vicecomes comitatus, ubi facinus illud commiſſum eſt, venire faciat coram eiſdem judicib⁹, viginti quatuor probos & legales homines de vicineto villæ, ubi illud factũ eſt, qui rettatum

BVt it is alſo neceſſary to diſcuſſe, how in matters criminall, the laws of England doe fetch out the truth, that perfectly underſtanding the forme of both the Laws, we may the more certainly perceive and know, whether of them both doth more effectually diſcover the hidden truth. If any man accuſed of felony or treaſon in England, doe at his arraignment before the ſame Judges deny the offence, forthwith the Sheriffe of the County, where the deed was done ſhall cauſe to come before the ſame Judges four and twenty good and lawfull men dwelling nigh to the village, where the fact was done, ſuch men as to

to the party accused be nothing allyed, and such as every of them hath an hundreth shillings of Lands and Revenues, to certifie the Judges upon the truth of the crime. Which at their appearance the partie accused may challenge, in like sort as in actions real may be doue, as afore is described. And moreover the same party in favour of his life may challenge five and thirty men such as he most feareth: which upon his challenge shall be cancelled in the pannell: or shall be noted with such markes, that they shall not passe upon him: though he be not able to shew any cause of his exillũ nulla affinitate attingunt, & quorũ quilibet C. s. habeat terræ & reddit⁹ ad certificãdum Judic'. illos super criminis illi⁹ veritate. Quib⁹ cõparẽtib⁹, rectatus ille eos *calumpniare* potest, eadẽ forma, qua in actionib⁹ realib⁹ fieri debere superi⁹ describitur, Et insup re⁹ ipse *in favor' vitæ suæ calũpniare potest* 35. *homines, quos ipse maxime formidat*, qui ad ej⁹ calũpniã cancellabuntur in panello aut signis talib⁹ notabũtur, quod (ut verbis legis utar) illi super eum nõ transibunt, licet ipse nullã causã assignare sciat ex-

ceptionis ſeu calumpniæ ſuæ. Quis tunc mori poſſet inique in Anglia *pro crimine*, cum tot juvamina habere ille poterit ob favorem vitæ ſuæ, & non niſi vicini ejus, probi & fideles homines, vers⁹ quos ipſe nullam habet materiam exceptionis, eum condemnare poterunt? *Mallem revera viginti facinoroſos mortem pietate evadere, quam juſtum unum injuſte condemnari.* Nec tamen reum quēpiam ſub hac forma, reat⁹ ſui pœnā evadere poſſe ſuſpicandum eſt, dum ejus vita & mores timori deinceps

ception and challenge. Who then can unjuſtly die in England for any criminall offence, ſeing he may have ſo many helps for the favour of his life, and that none may condemne him but his neighbours, good and lawfull men, againſt whom he hath no matter of exception. Indeed I would rather wiſh twenty evil doers to eſcape death through pitty, then one man to be unjuſtly condemned. And yet it is not to be ſuſpected, that any offendour can under this form, eſcape the punuſhment of his offence, forasmuch as his life and converſation ſhall be afterward a terrour to them that have thus

thus cleared him of the crime. In this kind of proceeding there is no cruelty or extremity used, neither can the innocent & unguilty person be hurt in his body or limmes: wherefore he shall not stand in fear of the slander of his enemies, because he shall not be racked or tormented at their will and pleasure. Thus under this Law a man may passe his life with quietness and safety. Judge you therefore, most noble Prince, whether of these laws ye had rather chuse, if you should live a private life.

erunt eis, qui eũ sic purgarũt a crimine. In hoc equidẽ processu, nihil est crudele, nihil inhumanum, nec lædi poterit innocens in corpore aut membris suis: Quare nec formidabit ille calũpniã inimicorum ejus, quia nõ torquebitur iste ad arbitriũ ipsorũ. Sub hac igitur lege vivere quietũ & securũ est. Judica ergo, *Princeps optime*, quæ legũ harũ tibi electissima foret, si tu privatã spiritares vitam.

¶ Chap. 28. *The Prince granteth the Laws of England to be more commodious for the subjects, then the Civil Laws in the case now disputed.*

Cui *Princeps*, arduũ ambiguũve, Cancellarie, non cõspicio, qd morosum me titubantẽve redderet in electione rei, quã interrogas. Nam quis non sub lege, qua securã ducere posset vitam, ducere potiùs eligeret quã sub lege tali, sub qua inermem, indefensumq; se sẽper redderet sævitiæ omnium inimicorũ ejus? Vere tutus quisquam esse non poterit in corpore aut in bonis, quem inimicus ejus (in omni causa) cõvincere poterit, testibꝰ duobus etiam ignoris, per ipsummet electis & productis.

Whereunto the Prince answered and said: I se no hard or strange matter, good Chancellour, that should make me doubtfull or dangerous in the election and choise of the thing that ye aske. For who would not rather chose to live under the Law, whereunder he might live in security, then under that Law, which would set him naked and succourlesse against the cruelty of his enemies? Verily, no man can be safe in body or goods, whom his adversarie may convince in every cause, with two unknown witnesses of his own choosing and bringing forth.

And

And though a man be not compelled by their sayings to die, yet is he little relieved, that hath escaped death being shrunk in all his sinews and limbs, and cast into a perpetual impotency of his body, and truly into such danger may the craft of a spitefull person bring any man that liveth under the Law, which here-while you speak of. But such mischeif and inconvenience cannot be wrought by witnesses, that make their depositions in the presence of 12 credible men, neighbours to the deed, that is presently in question, and to the circumstances of the same: which also know the manners and conditions of the same wit-

Et licet quis mortē, per dicta eorum, subire nō cogatur, parum tamē relevatur ipse qui mortem evasit, contractione nervorū, & mēbrorum suorū, atq; corporis ejus lāguore perpetuo. Tali revera discrimini impellere potest inimica astutia omnē hominē qui sub lege degit, quā tu jam dudum explicasti, Sed tale malū operari nequeunt testes, qui depositiones suas faciūt, in præsētia duodecim fide dignorū virorū, facto vicinorum, de quo agitur, & circūstantiis ejus: qui & noscunt eorundē testiū

um mores, maxime ſi vicini ipſi fuerint, noſcunt etiam, & ſi ipſi ſint credulitate digni. Omnes etiam duodecim tales latere omnino non poterit, quicquid actum eſt, per, aut inter vicinos eorum. Noſco namque ego certius, quæ jam aguntur hic in Barro, ubi ſum modo converſatus quam quæ in Anglia fiunt. Nec effugere poſſe puto notitiam probi viri ea, quæ aguntur, licet quodammodo occulte, prope domicilium ejus. Sed tamen cur prædicta lex Angliæ quæ tam frugi & optabilis eſt

neſſes, eſpecially if they be nigh dwellers, and know alſo whether they be men worthy to be credited or no. And further all thoſe twelve cannot be ignorant in thoſe things, that were done by and among their neighbours. For I know more certainely the things that are done here in Berry, where I am now remaining, then thoſe things that are done in England. Neither doe I think, that things can be kept from the knowledge of a good and honeſt man, being done nigh to his houſe, and almoſt under his noſe, be they never ſo ſecretly done. But yet I marvell much, why the foreſaid law of England, which

which is so good and commodious, is not common to all the whole world.

non est toti mundo communis, vehementer admiror.

¶ Chap. 89. *Why Inquests are not made by Jurors of xii. men in other Realms, as well as in England.*

YOur highness went very young out of England (quoth the Chancellour) so that the disposition and qualitie of that land is unknown unto you. Which if ye know, and should compare therewith the commodities and qualities of other Countries, you would nothing marvaile at these things, which now doe trouble your mind. Indeed England is so fertile and fruitfull, that comparing quantity to quantity,

CAncellarius: Juvenis recessisti (*Princeps*) ab Anglia, quo ubi ignota est dispositio, & qualitas terræ illius, quas si agnoveris, & cæterarum regionum emolumenta qualitatesq; eisdem comparaveris, non admirareris ea, quibus jam agitatur animus tuus. Anglia sane tam fertilis est, quod quantitate ad quãtitatem comparata,

ipsa

ipſi cæteras omnes quaſi regiones exſuperat *ubertate fructuum*. etiam ſuũ ultro ipſa profert, vix induſtria hominis concitata. Nã *agri* ejus, *campi*, *ſaltus*, & *nemora*, tãta fœcunditate germina eballiunt, ut inculta illa, ſæpe plus commodi afferant poſſeſſoribꝰ ſuis, quam arata, licet fertiliſſima ipſa ſint *ſegitum*, & *bladorum*. Includuntur quoq; in terra illa *paſturarum arva*, *foſſatis*, & *ſepibus*, deſuper *arboribus* plantatis, quibus muniuntur à procellis & æſtu ſoli eorum *greges* & *armenta*,

it ſurmounteth all other Lands in fruitfulneſs. Yea, it bringeth forth fruit of it ſelf, ſcant prouoked by mans induſtry and labour. For there the Lands, the Fields, the Groves, and the Woods, do ſo abundantly ſpring, that the ſame untilled doe commonly yield to their owners more profit then tilled, though elſe they be moſt fruitfull of Corn and Grain. There alſo are Fields of paſture incloſed with Hedges and Ditches, with Trees planted and growing upon the ſame, which are a defence to their herds of Sheep and Cattle, againſt ſtorms and heat of the Sun,

And

And the pastures are commonly watered, so that Cattel shut and closed therein, have no need of keeping, neither by day, nor by night. For there be no Wolves, nor Bears, nor Lyons, Wherefore their Sheep lye night by night in the Fields unkept within their Folds, wherewith their Land is manured. By the means whereof, the men of that Country are scant troubled with any painfull labour, Wherefore they live more spiritually, as did the ancient Fathers, which did rather choose to keep and feed Cattel, then to disturbe the quietness of the mind with care of Husbandry.

ipsæque pasturæ ut plurimum irriguæ sunt quo infra earũ claustra reclusa animalia, custodia non egent, per diem, nec per noctem. Nam ibi lupi nõ sunt, ursi, nec Leones, quare de nocte oves eorũ incustoditæ in campis recumbunt, in caulis, & ovilibus, quibus impinguantur terræ eorum, Unde homines patriæ illius, vix operis sudore gravãtur, quare spiritu ipsi magis vivunt, ut fecerunt patres antiqui, qui pascere malebãt greges quam animi quietẽ agriculturæ solicitudine turbare.

Ex

Ex quib⁹, homines regionis illius apti magis redduntur & diſpoſiti ad diſcernendū in cauſis, quæ magni ſunt examinis, quam ſunt viri, qui telluris operib⁹ inhabitantes, ex ruris familiaritate mētis cōtrahunt ruditatem. Regio etiam illa, ita reſperſa, refertaq; eſt *poſſeſſoribus terrarum* & agrorum, quod in ea, villula tā parva reperiri non poterit, in qua non eſt *miles, armiger*, vel pater familias, qualis ibidē *Franklain* vulgariter nuncupatur, magnis ditatus poſſeſſionibus, necnon libere tenentes alii,

And hereof it commeth, that men of this Countrie are more apt and fit to diſcern in doubtfull cauſes of great examination and trial, then are men wholly given to moiling in the ground: in whom that rurall exerciſe engendreth rudeneſs of wit and mind. Moreover the ſame Countrey is ſo filled and repleniſhed with Landed men, that therein ſo ſmall a thorp cannot be found, wherein dwelleth not a Knight, an Eſquire, or ſuch a Youſholder, as is there commonly called a franklayne, enriched with great poſſeſſions. And alſo other Freeholders, and

and many Yeomen able for their livelyhoods to make a Jury in form aforementioned. For there be in that Land divers Yeomen, which are able to dispend by the year above a hundred pounds, Wherefore the Juries afore declared, are there very oft made, specially in great matters, of Knights, Esquires, and others, whose possessions in the whole amounteth yearly above the sum of five hundred marks.

Wherefore it cannot be thought, that such men can be suborned, or that they will be perjured, not onely for that they have before their eyes the fear of God, but also, for that they

& *Valecti* plurimi, suis patrimoniis sufficientes, ad faciendum juratã in forma prænotata. Sunt namque valecti diversi in regione illa, qui plusquam sexcenta scuta per annum expendere possunt, quo *jurata* superius descriptæ, sæpissime in regione illa fiunt, præsertim in ingentibus causis, de militibus, armigeris & aliis, quorum possessiones in universo excedunt duo millia scutorum per annũ. Quare cogitari nequit, tales subornari posse, vel perjurari velle, nedum ob timorẽ Dei, sed & ob ho-

honorē ſuum conſervandum & vituperium, damnum quoque inde conſequutivū evitandum, etiam, ne eorum hæredes ipſorum lædantur infamia. Taliter, *filii regis*, diſpoſita, inhabitaque non ſunt aliqua alia mundi regna.

Nā licet in eis ſint viri magnæ potentiæ, magnarum opum & poſſeſſionum, non tamen eorum unus prope moratur ad alterum, ut in Anglia tanti morantur viri, nec tanta, ut ibi, hæreditatorum eſt copia & poſſidentium terras.

have a carefull regard to the preſervation of their Honours, and to the eſchewing of reproach, and dammage, thereupon enſuing, and alſo that their heires be not impeached thorough their infamie. After this manner, O mighty Prince, are none other Realms of the world diſpoſed and inhabited.

For though there be in them men of great power, of great riches, and poſſeſſions, yet they dwell not one nigh to another, as ſuch great men doe in England, Neither ſo many inheritours and poſſeſſors of Land are elſewhere, as in England.

For

For in a whole town of any other Country, it is hard to find one man, which for his livelihood is able to be received into a Jurie. For there, except it be in Cities, and walled Townes, very few there be, beside Noble men, that have any possessions of Lands or other immoveables. The Noble men also have there small store of pasture, And to labour in vineyards, or to put their hands to the plough, that is unfit for their estate and degree, And yet in Vineyards, and arable ground, consisteth the substance of their possessions, saving onely a few fields next adioyning to great ri-

Vix enim in villata una *regionum aliarum* reperiri poterit vir unŏ patrimonio sufficiens, ut in juratis ipse ponatur. Nam rarò ibidem aliqui præter nobiles reperiuntur, possessores agrorũ, aliorumve immobilium, extra civitates & muratas villas. *Nobiles* quoque ibidem pasturarum copiam non habẽt, & vineas colere, aut aratro manus apponere statui eorũ non convenit, tamen in vineis & terris arabilibus cõsistit substãtia possessionũ eorum, *exceptis* solum pratis quibusdã, adjacẽtibus *magnis ri-*

pariis, & exceptis *boſcis*, quorum paſturæ cõmunes ſunt tenentibus, & vicinis ſuis. Quomodo tunc in regionibus talibus jurata fieri poterit, ex duodecim probis hominibus de vicineto, ubi factum aliquod in judicio deducitur, cum vicini dici non poterunt, qui tanta diſtantia diſtinguuntur? Vere remotos multum a facto duodecim juratos ibidem eſſe oportebit, poſtquam reus in regionibus illis, triginta quinq; (ſine aſſignata cauſa) de propinquioribꝰ calumniaverit: quare aut

vers, and ſaving alſo certain Woodes, the paſtures whereof are common to their tenants and neighbours. How then can a Jurye be made in ſuch Countries of twelve ſubſtantial men, nigh adjoyning to the place of any deed brought in judgement, ſeeing they cannot be called neighbours that dwell ſo far aſunder. Truely twelve ſwozne men, there, muſt needs be far diſtant from the place of the deed, when the defendant in thoſe Countries hath challenged thirty ſixe men of the next dwellers, without ſhewing any cauſe why: Wherefoze, in thoſe lands a Jury muſt

must be made, either of such, as dwell far off from the place of the deed that is in controversie, and therefore cannot attaine to the knowledge of the truth thereof, or else it must be made of poore men, that be not ashamed of infamy, neither doe fear the losse of their goods, which they have not. They also blinded with rustical and brute rudenesse, are not able to behold the clear brightnes of the truth.

Marveile not therefore most worthy Prince, if the Law, whereby the truth is sifted out in England, be not frequented and used in other nations. For they are not able to make sufficient and

de multum remotis a facto, de quo contenditur, qui veritatem facti non agnoscunt, in regnis illis oportebit facere juratam, aut de pauperibus, quibus non est verecundia infamiæ, nec timor jacturæ bonorum suorum, cum ipsa non sint, ipsi etiam rusticitatis ruditate obcæcati, veritatis claritatem nequeunt intueri.

Non igitur mireris, *Princeps*, si Lex, qua in Anglia veritas inquiritur, alias non pervagetur nationes, ipsæ namque, ut Anglia, facere neque-

Fortescue, *in Commendation*

unt sufficientes cō-similésque juratas.

like Juries, as be made in England.

¶ Chap. 30. *Here the Prince commendeth the Laws of England, of their proceeding by Juries.*

Tunc *Princeps*, *Comparationes odiosas esse* licet dixerimus, lex tamen Civilis, in comparatione per te facta, omni se purgabit à crimine: quia, licet ei Legem Angliæ tu prætuleris, odium inde ipsa non meretur, dum neque eam, neque cōditores ejus increpasti: sed solum *patriam*,

THough we have said, (quoth ꝑ Prince) that comparisons are odious, yet the Civile Law in the comparison by you made, hath cleared it self from all blame: For, though you have proved the Law of England to be of more excellency then it, yet it deserveth not thereby to be odious, for so much as you have blamed neither it, nor the makers thereof: But have shewed the coun-

countrie, where it ruleth, to be the onely cause, why it doth not, in matters of doubt trie out the truth with so commendable a kinde of proceeding as the Law of England doth. But as touching that the Law of England, in the case by you now discussed, is more fit and meet for that realm, then the Civil law, hereof we may not doubt: Wherefore, we are not desirous to change it for the civil law: Notwithstanding this preeminence of the Law of England, proceedeth not of the fault of the other, for it is onely the fertility of England, that hath caused it to be such as it is.

ubi illa regit, causam esse demonstrasti, quod non tam optabili processu, ut lex Angliæ, ipsa in dubiis elicit veritatē. Legem vero Angliæ, in casu jam per te disputato, accómodatiorem esse regno illi, quam est lex Civilis, ambigere non sinimur, quo, eam pro Civili commutare non appetimus: Sed tamen hæc Legis Angliæ præeminentia, ab alterius crimine non evenit, solum enim eam, Angliæ fertilitas sic causavit.

¶ Chap. 31. *The Prince doubteth, whether this proceeding by a Jury, be repugnant to Gods law, or not.*

SEd, licet non infimè, Cancellarie, nos delectet forma, qua leges Angliæ in contentionibus revelant veritatem, tamen, an modus ille ſacræ repugnet ſcripturæ, vel non, paululum agitamur: Ait namque *Dominus* Phariſæis, Johan. viii. *In lege veſtra ſcriptum eſt, quia duorum hominum teſtimonium verum eſt*, & huic applaudens

BUt, though we be greatly delighted in ꝑ forꝫm, which the Laws of England uſe in ſifting out the truth in matters of contention, yet whether the ſame law be contrary to holy Scripture or not, that is to us ſomewhat doubtfull: For our LORD ſaith to the Phariſæs, in the eight chapter of Saint Johns Goſpel: In your Law it is written, that the teſtimony of two men is true: And the LORD confirming

ming the ſame faith: I am one that beare witneſs of my ſelfe, and the Father that ſent me, beareth witneſs of me. Now Sir, the Phariſees were Jewes, ſo that it was all one to ſay: It is written in your Law, and it is written in Moyſes Law, which God gave to the children of Iſrael by Moyſes. Wherefore to gainſay this Law, is to denie Gods Law: Whereby it followeth, that if the Law of England ſwerve from this Law, it ſwerveth alſo from Gods Law, which in no wiſe may be contraried. It is written alſo in the eightteenth Chapter of Saint Matthews goſpel, Dominus iuquit: *Ego ſum, qui teſtimonium perhibeo de me ipſo, & teſtimonium perhibet de me, qui miſit me, pater.* Phariſæi quippe Judæi erant, unde idem erat dicere, in lege veſtra ſcriptum eſt, & in lege Moyſaica (quæ à Domino, per Moyſen filiis Iſrael, prolata fuit) ſcriptum eſt. Quare huic legi contraire, legi eſt divinæ refragare, quo ſequitur, qd lex Angliæ, ſi ab hac lege diſcedat, a lege divina, cui reluctari non licet, ipſa diſcedit. Scribitur etiam Matth. xviii.

Quod dominus (loquens de correctione fraterna) inter alia ſic ait: *Si autem non te audierit frater tuus, adhibe tecum adhuc unum aut duos, ut in ore duorum vel trium, ſtet omne verbum.* Si in ore duorum vel trium, Dominus omne verbum ſtatuerit, fruſtra plurium hominum quæritur in dubiis veredictum. Nemo enim poteſt, melius, aut aliud fundamentum ponere, quam poſuit dominus.

Hæc ſunt, Cancellarie, quæ me, de

Where the Lord, ſpeaking of brotherly admonition, among other things ſayeth thus: But if thy brother hear thee not, then take yet with thee one or two, that, in the mouth of two or three witneſſes, every matter may be eſtabliſhed. If the Lord have appointed every matter to be eſtabliſhed in the mouth of two or three witneſſes, then it is in vain for to ſeek for the verdict of many men in matters of doubt. For no man is able to lay any other or better foundation then the Lord hath laid.

Theſe are the doubts, good Chauncellour, which, touching the pro-

proceeding of the law of England in the trial of matters, doe somewhat trouble me. Wherefore, what answer may hereunto be made, I would gladly learn of you.

legis Angliæ processu in probationibus, aliquantulum conturbant. Quare, quid his respondendum est, à te doceri deposco.

Chap. 32. *Here is shewed, that the proceeding by a Jurie, is not repugnant to the Law of God.*

THe Lawes of England quoth the Chancellor, are nothing at all repugnãt to these things that trouble you, most worthy Prince, though they in matters of doubt do somewhat otherwise boult out the truth. The law of the general Councel, wherein it is provided that Cardinals shall not be convicted of criminal offences, otherwise then by the deposition

CAncellarius: Nõ his, quibus turbaris, *Princeps*, contrariãtur leges Angliæ, licet aliter quodammodo ipsæ in dubiis eliciant veritatẽ. Quid duorum hominum testimonio obest *lex illa generalis Concilii*, qua cavetur, ut non nisi *duodecim testium depositione* Car-

cardinales de criminibus convincatur? Si verum est *duorum* testimonium, a fortiori, testimonium *duodecim* verum judicari debet, dicente juris regula: *Plus, semper in se continet, quod est minus.* Supererogationis meritum promittebatur *stabulario*, si plus quam duos, quos recepit, denarios, ipse in vulnerati curationē erogasset. Nonne plusquam duos aut tres testes producere oportebit quempiam, qui absentem se fuisse probare nititur, tempore criminis sibi impositi, quod per duos aut tres testes

of twelve witnesses, is it any hindrance to the testimonie of two men? If the testimonie of two men be true, of more force must the testimonie of twelve men be judged true, according to a rule of the Law that saith: The more, ever containeth in it, that which is lesse. The Inholder was promised to be rewarded with an over-plus, if he bestowed upon the cure of the wounded man, more then the two pence, which he received. A man that laboureth to prove, that he was absent at the time of the offence, wherewith he is charged, shall it not be needfull for him to bring forth more then

two

two or three witnesses, when his adversary hath proved, or is ready to prove the same, by two or three witnesses? And so he, that travelleth to convince witnesses of perjury, must of necessity bring forth many moe then they were, so that the testimony of two or three men shall not ever be judged true: But that Law must thus be understood, that by a lesser number of witnesses then two, the truth, in matters doubtfull, ought not to be searched for, as appeareth by Bernard assigning divers cases, wherein by the Laws moe then three witnesses must needs be produced: As in some of them five, and in

adversari⁹ ejus probavit, vel probare parat⁹ est? Sic & qui testes de perjurio convincere satagit, multo illis plures, producere necesse habet, quo nō sēper ii. vel iii. hominū testimoniū verū esse judicabitur: sed intelligenda est lex illa, qd *minore testium numero quamvis* veritas in dubiis non debet exquiri, ut pater per *Bernardum* extra de testi. ca. licet in glossa ordinaria, ubi ipse assignat diversos casus, in quibus per leges, plures quam tres oportet producere testes, Viz. in aliquibus eorum v. &

& in aliquib⁹ septē : per duos etiā testes veritatē probari posse, cū non aliter ipsa pateret, utiq; leges Angliæ affirmāt. Nam si *quæ supra altum mare* extra corp⁹ cujuslibet comitatus regni illius fiant, quæ postmodū in placito *coram Admirallo* Angliæ deducantur, per testes illa juxta legū Angliæ sāctiones probari debent. Consimiliter quoq; corā cōstabulario & mariscallo Angliæ fieri solitū est de facto, qd in regno alio actum est, dūmodo ad jurisdictiōē *curiæ Constabularii* cognitio ejus pertineat.

and in some seven. For yet the Laws of England be not against it, but that the truth may be proved by two witnesses, when it cannot otherwise be tried. For if things be done upon the Sea without the body of any County of that Realm, which afterward be brought in plea before the Lord Admiral, the same things by the decrees of the Laws of England must be proved by witnesses. In like manner it hath bin accustomed to be done before the Constable and Marshall of England, touching a fact that was done in another Realm, so that the hearing thereof appertaineth to the Constables court.

More

Moreover, in the Courts of certain Liberties in England, where matters proceed by Law Merchants contracts or bargains, made among Merchants in another realm, are proved by witnesses. And this commeth to pass, because that in these cases there be no neighbours found, by whose oaths, Juries of twelve men may be made, as in contracts, and other cases, arising within the realm of England is accustomed to be done. Likewise if a deed, wherein witnesses are named, be brought into the Kings Court, then process shall be made against those witnesses: and they together with twelve Jurors

Etiam & in curiis quarundam libertatum in Anglia, ubi per *legem Mercatoriam* proceditur, probant per testes, contractus inter mercatores extra regnum factos. Quia in casibus his nō reperiuntur vicini, per quorum sacramenta, juratæ ex duodecim hominibus fieri possunt, prout de contractibus & aliis casibus, infra regnum Angliæ emergentibus, est fieri consuetum. Similiter, si carta, in qua testes nominantur, deducatur in curia Regis, processus tunc fiet erga testes illos, ipsi quo-

quoq; recognoſcēt ſimul cū xii. juratoribꝰ per eorū ſacramēta utrū carta illa ſit factum ejus, cujꝰ ſupponitur, an non. Quare, legē, qua teſtibꝰ veritas extorquetur, lex Angliæ nō condēnat, maxime cum *neceſſitas* id deꝓoſcat: quia & ſic faciūt ipſæ leges Angliæ nedū in caſibus jā notatis, ſed etiā in quibuſdā caſibus aliis, quos nō expedit hic notare. Sed per teſtes ſolū lex ipſa nunquā litē dirimit, quæ per juratam xii. hominū decidi poterit, cum ſit modus iſte ad veritatem eliciendā multo potior &

ſhall by their oaths recogniſe, whether the ſame be his dæd oꝛ no, whoſe it is ſuppoſed to be. Wherefoꝛe the Law of England reꝓroveth not the Law, which by witneſſes treeth out the truth, ſpecially when neceſſity ſo requireth: Foꝛ ſo doe the Laws of England too, not onely in the caſes now mentioned, but alſo in certain other caſes, whereof here to make rehearſal it ſhall not be material. Howbeit this Law never determineth a controverſie by witneſſes onely, that may be determined by a Jury of xii. men: foꝛſomuch as this way is much moꝛe availeable and effectual foꝛ the tryall of the truth then

then is the forme of any other Lawes of the world, and further from the danger of corruption and subornation. For this forme of proceeding cannot in any cause faile for want of witnesses, nor the testimonies of witnesses (if any be) cannot choose but come to their due end and effect: Neither can such twelve men be forsworne, but that for their offence they must suffer most sharpe punishment, and nevertheless the party, by there depositions grieved, shall obtaine due remedy: And these things shall not be done by the will and sayings of strange or unknown

efficacior, quam est forma aliquarũ aliarum legum orbis, & remotior a corruptionis & subornationis periculo. Nec potest hæc procedendi forma in causa aliqua, ob defectũ testiũ deperire, neq; testium (si qui fuerint) attestatio, effectũ debitum non sortiri, nec perjurari possunt duodecim homines hujusmodi, quin pro eorum crimine, ipsi acerbissime puniãtur, & nihilominꝰ pars, per eorũ depositionẽ gravata, remediũ debitũ cõsequetur. ac, non fient hæc per extraneorum aut ignotorum

torũ hominũ arbitriũ aut dictamẽ, ſed per proborũ, nobilium & fide dignorũ, vicinorũ partib⁹, ſacramẽtũ, quib⁹ partes illæ nullã habẽt cauſam calumpniæ aut diffidentiæ de eorum dicto. O quã horrendum & deteſtabile diſcrimẽ ſæpe accidit, ex forma per depoſitionẽ teſtium procedendi! Nonne, ſi quis clandeſtinũ contrahat matrimoniũ, & poſtea corã teſtib⁹ mulierẽ aliã ipſe affidaverit, cũ eadem conſummare matrimonium arctabitur in *foro contentioſo*, & poſtea in *pœnitentiali foro* judicabitur ipſe

men, but by the oaths of good, of worſhipful, and of credible men, neighbours to the parties, in whom the ſame parties have no cauſe of challenge or miſtruſt, touching their Verdict. O how horrible and deteſtable dangers happen many times through the form of proceeding by witneſſes! If a man make a priue contract of matrimonie, and afterward before witneſſes do betroth or aſſure himſelf to another woman, ſhall he not in the contentious court be compelled to marry her, and alſo after that in the Penitential court, be judged to lie with the firſt, if he be duely required, and to do penance, as oft as by his

his own motion and procurement he lyeth with the second, though in both Courtes the Judge be one and the self same man. In this case, as it is written in Job, are not the sinewes of Leviathan perplexed and intricate? Fie for shame they are intricate indeed: For, this man can carnally company with neither of these two women, nor with any other, without punishment either by the contentious Court, or by the Penitentiall Court. Such a mischief, inconvenience, or danger, can never happen in any case by the way of proceeding by the Law of England, no not though Leviathan himself would labour to

cõcumbere cum prima, si debite requiratur, & pœnitere debet quoties ex actione propria concubuerit cũ secũda, licet in utroq; foro judex fuerit homo unus & idẽ. Nonne in hoc casu, ut in *Job* scribitur, *perplexa sunt testiculi Leviathan?* Proh pudor, vere pplexi sũt, nã, cum neutra mulierũ harũ, néq; cum alia, contrahens iste, extunc concumbet sine animadversione in foro contendentium aut pœnitentium: quale malum, inconveniens, aut discrimen per modum & formã processus legis Angliæ

impoſſibile eſt in caſu aliquo evenire, etiã ſi *Levithian* ipſe ea generare nitatur. Nõne vides jã, *princeps clariſſime*, leges Angliæ tanto magis clareſcere, quanto eiſdem tu amplius reluctaris?

procure the ſame. Doe ye not now ſee, moſt noble Prince, that the more you object againſt the Laws of England, the more worthy they appear?

¶ Chap. 33. *Wherefore, certaine Kings of England have had no delight in their own Laws.*

PRinceps, videc, inquit, & eas inter totius orbis jura (in caſu, quo tu jam ſudaſti) præfulgere conſidero, tamen progenitorum meorum Angliæ regum quoſdam audivimus, in legibus ſuis minime delectatos,

I See plainly, quoth the Prince, that in the caſe, wherein you have now travailed, they have the preeminence above all other Laws of the world, yet we have heard, that ſome of my progenitors, Kings of England, have not bin pleaſed with their own Laws, and have therefore gone about to bring

bring in the Civil laws to the government of England, and to abolish their own Country Laws. For what purpose and intent they so did, I much marvell.

satagentes proinde, leges civiles ad Angliæ regimen inducere, & patrias leges repudiare fuisse conatos: horum reveta consilium vehementer admiror.

¶ Chap. 34. *Here the Chancellour openeth the cause, which the Prince demandeth.*

YOu would nothing marvel hereat, quoth the Chancellour, if you did deeply consider with your self, the cause of this intent. For you have heard afore, how that, among the Civil Laws, that Maxime or rule is a sentence most notable, which thus singeth: The Princes pleasure standeth in force of a Law: quite

CAncellarius: Nō admirareris, Princeps, si causam huj⁹ conaminis mēte solicita pertractares. Audisti namque superius, quomodo inter leges Civiles præcipua sententia est, maxima sive regula, illa quæ sic canit, *quod Principi placuit, legis habet vigorem,*

rem, qualiter nó ſanciunt leges Angliæ, dum nedum *regaliter*, ſed & *politice* rex e juſdem dominatur in populum ſuum, quo ipſe, in *coronatione* ſua ad legis ſuæ obſervantiam aſtringitur ſacramento, quod reges quidem Angliæ ægre ferentes, putãtes proinde ſe non libere dominari in ſubditos, ut faciunt reges regaliter tantum principantes, qui lege civili, & potiſſime prædicta legis illius maxima, regulant plebem ſuam, quo ipſi, ad eorum libitum, jura mutãt, nova condunt, pœnas

contrary to the decrees of the Laws of England, whereby the King thereof ruleth his people, not onely by Regall, but alſo by Politique government, Inſomuch that at any time of his coronation, he is bound by an oath to the obſervance and kæping of his own Law, which thing ſome Kings of England not well bzooking, as thinking that thereby they ſhould not freely govern their Subiects as other Kings doe, whoſe rule is onely regall, governing their people by their Civil Law, and chiefly by that forezaid ſparime of the ſame Law, whereby they at their pleaſure change Laws, make

make new Laws, execute punishments, burden their subjects with charges: and also when they list, do determine controversies of suters, as pleaseth them. Wherefore, these your progenitours went about to cast off the yoke politique, that they also might likewise rule, or rather rage, over the people their subjects in regall wise onely: not considering that the power of both kings is equal, as in the foresaid Treatise of the Law of nature is declared: and that to rule the people by government politique, is no yoke, but liberty, and great securitie, not onely to the subjects but also to the King himself: and

infligunt & onera imponunt subditis suis, propriis quoque arbitriis, contẽdẽtium, cũ velint dirimũt lites. Quare, moliti sunt ipsi progenitores tui hoc jugum politicũ abjicere, ut cõsimiliter & ipsi in subjectum populum regaliter tantũ dominari, sed potius debacchari queãt: non attendentes, quod æqualis est utriusq; Regis potẽtia, ut in prædicto *tractatu* de *Natura legis naturæ* docetur, & qd non jugũ sed libertas est politicè regere populũ, securitas quoque maxima nedum plebi, sed & ipsi re-

gi, alleviatio etiam non minima ſolicitudinis ſuæ. Quæ ut tibi apertius pateant, utriuſq; regiminis experientiam percunctare, & à regimine tantũ regali, qualiter Rex Frãciæ principatur in ſubditos ſuos, exordium ſumito: deinde à regalis & politici regiminis effectu, qualiter Rex Angliæ dominatur in ſibi ſubditos populos, experientiam quære.

ther no ſmall lightning or eaſement to his charge. And that this may appear more evident unto you, ponder and weigh the experience of both regiments. And begin with the King of France, peruſing after what ſort he ruleth his Subiects by Regal government alone: And then come to the effect of the ioynt gouernance, regall and politick, examining by experience, how and after what manner, the King of England gouerneth his Subiects.

¶ Chap. 35. *The inconviences that happen in the Realm of* France, *through Regal government alone.*

Call

CAll to remembrance, moſt worthy Prince, after what ſort you ſaw the wealthy Villages and Towns (as touching ſtore of Corne) in the Realm of France, while you were there a ſojourner, peſtered with the Kings men at armes and their horſes, ſo that skant in any of the great towns there you could get any lodging: Where, of the inhabiters you learned, that thoſe men, though they continue in one village a moneth or two, do not, nor will pay any thing at all, either for their own charges, or for the charges of their horſes. But which is worſe, they compelled the inhabitants of the Villages

REminiſcere (*princeps divine*) qualit' villas & oppida regni Franciæ frugum opulentiſſima, dum ibidē peregrinabaris, cōſpexiſti, Regis terræ illi⁹ *hominibus ad arma, & eorum equis* ita onuſta, ut vix in eorum aliquib⁹ quā magnis oppidis tu hoſpitari valebas: ubi ab incolis didiciſti, homines illos, licet in villa una per mēſem aut duos perhendinaverint, nihil prorſus, pro ſuis aut equorum ſuorum expenſis, ſolviſſe, aut ſolvere velle, ſed quod pejus eſt, arctabant incolas villarum

& oppidorū, in quæ deſcēderant, ſibi de vinis, carnibus, & aliis, quibus indigebant, etiā cariorib⁹ neceſſariis quā ibi reperiebantur, à circumvicinis villatis, ſuis propriis ſuptib⁹ providere. Et ſi qui ſic facere renuebāt, cōcito fuſtib⁹ cæſi properè hoc agere cōpellebātur: ac demū cōſūptis, in villa una, victualib⁹, focalib⁹ & equorū probēdis, ad villā aliā homines illi properabāt eam cōſimiliter devaſtando, nec denarium unum pro aliquib⁹ neceſſariis ſuis, etiam aut concubinarum ſuarum, quas in magna co-

and town dwellers, whither they came, to provide of their own proper coſtes, out of the villages adjoyning, wine and fleſh for them, and other things that they needed, at dearer prices, then they might have bought the ſame at home. And if any refuſed thus to do, they were anon by plain Staffordſ Law forced to do it; And when they had ſpent all the victuals, fewell, and horſemeat, in one town, then thoſe men went to another town, waſting the ſame in like manner, not paying one peny for any neceſſaries, either for themſelves or elſe for their concubines any harlots, whereof they ever carried about with them great

great abundãce, nor for hosen or shoos, & other like, evẽ to the lest point or lace, but they compelled the townsmen where they tarried to bear all their expenses. And thus were all the villages and unwalled towns of the land used, so that there is not the least village there free from this miserable calamity, but that it is once or twice every year beggered by this kind of pilling. Furthermore the King suffereth no man to eat salt within his kingdome, except he buy it of the king at such price, as pleaseth him to assesse. And if any poor man had rather eat his meat fresh then to buy salt so excessively dear, he is

pia secũ sẽp vehebãt, vel pro sotularib⁹, caligis, aliis hujusmodi, usq; ad minimam earũ ligula solverũt, sed singulas suas qualescũq; expẽsas habitatores villarũ ubi moras fecerũt solvere coegerũt. Sicq; & factũ est in õnib⁹ villis & oppidis nõ muratis toti⁹ regiõis illi⁹, ut nõ sit ibi villula una, expers de calamitate ista, quæ nõ sẽel aut bis in ãno, hac nefãda pressura depilet'. Præterea nõ patitur rex quẽquã regni sui *salẽ edere*, quẽ nõ emat ab ipso Rege, precio, ej⁹ solũ arbitrio, assesso. Et si insulsũ *pauper*, quivis mavult edere, quã salem excessivo pre-

precio cõparare, mox cõpellit' ille, tãtũ de ſale regis ad ej⁹ precium emere, quantũ cõgruet tot pſõis, quot ipſe in domo ſua fovet. Inſup omnes regni illi⁹ incolæ dant omni año, regi ſuo, *quartam partem omnium vinorum* quæ ſibi accreſcũt & ois *campi quartum denarium* precii vinorũ, quæ ipſe vẽdit, & ultra hæc oẽs *villæ & burgi* ſolvũt Regi ãnuatim, ingẽtes ſũmas ſup eos aſſeſſas, pro ſtipẽdiis hominũ ad arma, ſic qd armata regis, quæ quã magna ſẽp eſt, paſcat' ãnuatim de ſtipẽdiis ſuis p pauperes villarũ, burgorũ, & civitatũ regni, immediatly compelled to buy ſo much of the kings ſalt at the kings price, as ſhall ſuffice ſo many perſons as he kæpeth in his houſe. Moreover all the inhabiters of that Realm, give yearly to the K. the iiij. part of all the wines that their ground beareth: & every Vintner the 4th peny of the price of the wine that he ſelleth, & beſides all this, every village and borough payeth yearly to the K. great ſums of money aſſeſſed upon them for the wages of men at arms, ſo that the charges of the kings army, wch is ever very great, is maintained by the poor people of the villages, boroughs, townes of the realm.

And

And yet moreover every village findeth continually [illegible]ij. Cross-bows at the least, & some mo, with all furniture & habiliments, requisite for the kings service in his wars, as oft as it pleaseth him to muster them, which he doth very oft: And, these things not considered, other exceeding great tallages are yearly assessed upon every village of the same realm to the kings use, whereof they are no year released. The people being with these & divers other calamities, plagued & oppressed, do live in great misery, drinking water daily. Neither do the inferior sort tast any other liquor, saving only at solemn feasts.

Et ultra hæc, quælibet villa semper sustinet 2. sagittarios ad min⁹, & aliquæ plures, ōni apparatu, & abilimētis sufficiētib⁹ ad serviēdū regi in guerris suis, quoties ibi libet eos summonere, qd & crebo facit: ac, hiis nō pōderatis, maxima *tallagia* alia, sūt ōni āno assessa ad opus regis, supra quālibet villā ejusdē regni, de quib⁹ nō uno anno ipsi alleviāt'. Hiis & nōnullis aliis calāitatib⁹, plebs illa lacessita, in miseria nōminima vivit, aquā quotidie bibit, nec aliū, nisi in solēnib⁹ festis, plebeii gustāt liquorem.

Froccis

Froccis ſive collobitis d' canabo admodũ pãni ſaccorũ teguntᵗ. Pãno de lãa, præterquã de viliſſima, & hoc ſolũ in tunicis ſuis ſubtᵒ froccas illas nõ utũtᵗ, neq; caligis niſi ad gẽua, diſcoopto reſiduo tibiarũ. Mulieres eorũ nudipedes ſũt exceptis diebᵒ feſtis, *carnes* nõ comedũt mares aut fœminæ ibidẽ præter lardũ bacõis, quo impinguãt pulmẽtaria ſua in minima quãtitate. Carnes *aſſatas coctaſve* alias ipſi nõ guſtãt, præterquã interdum de inteſtinis & capitibᵒ animalium, pro nobilibus & mercatoribus occiſorum:

Their ſhurtes are made of hemp, much like to ſackcloth. Wollen cloth they wear none except it be very courſe, & that only in their coats under their ſaid upper garments, neither uſe they any hoſen, but from the knæ upward: the reſidue of their legs go naked. The women go barefoot ſaving on holidaies, neither men nor women eat any fleſh there, but only lard of bacon, wᵗʰ a ſmall quantity whereof they fatten their pottage & brothes. As for roſted or ſodden meat of fleſh they taſte none, except it be of the inwards ſometimes and heads of beaſts, that be killed for gentlemen and merchants.

But

But the men at armes, they devour and consume all their pulleine, so that they have scant the egges left to eat for special dainties. And if they fortune at any time to grow somewhat wealthy in substãce, so that any of them be counted rich, he is by and by charged to the Kings Subsidie, more deeply then any of his neighbours, so that within short time he is made equall in poverty with the rest of his beggerly neighbours. And this as I suppose, is the state of the cõmon and rascall people of that nation. But Gentlemen and Nobles are not so oppressed, & overcharged with exactions. But if any of them chance to be accused of any crime,

Sed gentes ad arma comedunt alitilia sua; ita ut vix ova eorum ipsis relinquantur, pro summis vescenda deliciis. Et si quid in opibus eis aliquando accreverit, quo locuples eorum aliquis reputetur, concito ipse ad regis *subsidia*, plꝰ vicinis suis cæteris onerantur, quo, ex tunc convicinis cæteris ipse æquabitur paupertate. Hæc, ni fallor, forma est status gentis plebanæ regionis illius. *Nobiles* tamen, non sic exactionibus opprimuntur. Sed si eorum aliquis calumniatus fuerit de cri-

crimine, licet per inimicos ſuos nõ ſemper coram judice ordinario ipſe convocari ſolet: Sed quam ſæpe, in regis camera, & alibi in privato loco, quandoque vero ſolum per internuncios, ipſe inde alioqui viſus eſt, & mox ut *criminoſum* eum principis conſciẽtia, relatu aliorum judicaverit, in *ſacco* poſitus, abſque figura judicii, per præpoſiti mariſcalorum miniſtros noctanter in flumine projectus, *ſubmergitur*, qualiter & mori audiviſti majorem multo numerum hominum, quam qui legitimo

though it be by his enemies, he is not ever wont to be cited or called before an ordinary Judge: But many times it hath been ſeen that he hath in that behalf been talked with in the Kings Chamber, or elſewere in ſome private place, and ſometime onely by a Purſevant or Meſſenger: And immediately as ſoon as the Princes conſcience hath, through the report of others, judged him guilty, he is without any faſhion of judgement put in a Sacke, and in the night ſeaſon by the Marſhalls ſervants hurled into a River, and ſo drowned. After which ſort you have heard of many moe put to death, then that have been by ordi-

ordinary processe of the Law condemned. Howbeit the Princes pleasure, as say the Civil lawes, hath force of a Law. Also, while you were abyding in France, and nigh to the same Kingdome, you heard of other great enormities like unto these, and some much worse then these detestable and damnable, done no otherwise but under the colour of that Law, which here to rehearse would continue our talke too long a time. Now therefore, let us see, what the effects of the Law politique and Regall, which some of your progenitors would have changed into this civil, hath wrought in the

processu juris convicti extiterũt. Sed tamẽ, qd principi placuit (juxta leges civiles) legis habet vigorem. Etiam & alia *enormia*, hiis similia ac quædam hiis deteriora, dum in Francia & prope regnum illud conversatus es, audisti non alio, quã legis illius, colore, detestabiliter damnabiliterq; perpetrata, quæ hic inserere, nostrum nimium dialogum protelaret: Quare, quid effecto legis politicæ & regalis, quam quidam progenitorũ tuorũ pro lege hac civili, cõmutare nisi sunt, operatus est in regno

no Angliæ, a modo viſitem? ut utraque legum experientia doctus, quæ earum tibi eligibilior ſit, ex earum effectibus elicere valeas, cū (ut ſupra memoratur) dicat Philoſophus, quod, *oppoſita juxta ſe poſita, magis apparent.*

Realm of England that you being inſtructed with the experience of both Laws, may the better by their effects judge, whether of them ye ought rather to chooſe, Seeing the Philoſopher, as afore is rehearſed, doth ſay, that contraries laid together do more perfectly appear.

¶ Chap. 36. *The commodities that proceed of the joynt government, politique and regal in the Realm of England.*

IN regno Angliæ, *nullus perhendinat in alterius domo*, invito domino, ſi non in *hoſpiciis publicis*, ubi tunc pro omnibus, quæ ibidem expendit, ipſe plena-

WIthin the Realm of England, no man ſojourneth in another mans houſe, without the love & the leave of the good man of the ſame houſe: ſaving in common Inns, where before his departure thence, he ſhall fully ſatisfie

satisfie and pay for all his charges there: Neither shall he escape unpunished whosoever he be, that taketh another mans good, without the good will of the owner thereof, Neither is it unlawfull for any man in that Realm, to provide and store himself of salt, and other merchandises, or wares, at his own will and pleasure of any man that selleth the same. Howbeit, the King, though the owners would say nay, may by his Officers take necessaries for his house, at a reasonable price, to be assessed by the discretions of the Constables of the towns: Nevertheless, he is bound by the Laws to pay therefore, either presently in hand, or else

rie solvet ante ejus abinde recessum: nec impune quisque *bona alterius capit sine voluntate proprietarii eorundem*, neq; in Regno illo, præpeditur aliquis, sibi de sale, aut quibuscunque mercimoniis aliis ad proprium arbitrium, & de quocunque venditore, providere. *Rex* tamen, necessaria domus suæ, *per rationabile precium*, Juxta constabulariorum villarum discretiones assidendum, invitis possessoribus, per officiarios suos capere potest: sed nihilominus precium illud in manibus vel ad

diē per majores officiarios domus ſuæ limitādū *ſolvere* per leges ſuas obnoxi⁹ ē: quia nulli⁹ ſubditorū ſuorum bona juxta leges illas, ipſe deripere poteſt ſine ſatisfactione debita pro eiſdem. Neq; rex ibidē, per ſe, aut miniſtros ſuos *tallagia*, *ſubſidia*, aut quævis onera alia, imponit legiis ſuis, aut leges eorū mutat, vel novas condit, *ſine conceſſione* vel aſſenſu toti⁹ regni ſui, in *parliamento* ſuo expreſſo. Quare incola ōnis regni illi⁹ fructib⁹ quos ſibi parit terra ſua, & quos gignit pec⁹ ej⁹, emolumētis quoq; omnat a day to be limited and ſet by the higher Officers of his houſe: For by his Laws he may take away none of his Subjects goods, without due ſatisfaction for the ſame. Neither doth the King there, either by himſelf, or by his Servants and Officers levie upon his ſubjects, Tallages, Subſidies, or any other burdens or alter their laws, or make new Laws, without the expreſſe conſent and agreement of his whole Realm in his Parliament. Wherefore every inhabiter of that Realm, uſeth and enjoyeth at his pleaſure, all the fruits that his land or cattel beareth, with all the profits and commodities, which

which by his own travell, or by the labour of others, he gaineth by land or by water: not hindered by the injury or wrong detainment of any man, but that he shall be allowed a reasonable recompence: And hereby it cometh to passe, that the men of that Land are rich, having abundance of Gold and Silver, and other things necessary for the maintenance of mans life. They drink no water, unlesse it be so, that some for devotion and upon a zeale of penuance, do abstain from other drink, they eat plentifully of all kinds of flesh and fish, They weare fine Woollen cloth in all their apparell,

nib⁹, quæ industria propria, vel aliena, ipse terrâ mariq; lucratur, ad libitū propriū utitur, nulli⁹ p̄pedit⁹ injuria vel rapina, quin ad min⁹ inde debitas consequitur emēdas: unde inhabitātes terrā illā, locupletes sūt abūdātes auro & argēto & cūctis necessariis vitæ. Aquâ ipsi non bibūt, nisi qui ob devotionis & penitētiæ Zelū, aliquādo ab aliis potib⁹ se abstinēt: ōni genere *carniū* & *piscium*, ipsi in copia vescūtur, quib⁹ patria illa nō modice refertur, pānis de ānis bonis ipsi induuntur in omnibus *operimentis* suis,

etiam abundant in *lectisterniis*, & quolibet suppellectili cui lana cõgruit, in omnibus domibus suis, necnõ opulenti ipsi sunt in omnibus *hustilimentis* domus, necessariis culturæ & omnibus quæ ad quietam, & felicem vitam exiguntur secundum status suos. Nec in placitũ ipsi ducuntur, nisi coram judicibus ordinariis, ubi illi per leges terræ juste tractantur. Nec allocuti sive implacitati sunt de mobilibus aut possessionibus suis, vel arrettati—de—crimine aliquo, qualitercunq; magno &

They have also abounddance of bed-coverings in their Houses, and of all other woollen stuffe, They have great stoze of all hustlements and implements of household. They are plentifully furnished with all instruments of husbandry, and all other things, that are requisite to the accomplishment of a quiet and wealthy life, according to their estates and degrees. Neither are they sued in the Law, but only before ozdinary Judges, where by the laws of the land they are justly intreated. Neither are they arrested oz impleaded foz their moveables oz possessions, oz arraigned of any offence criminal, be it never so great and out-

outragious, but after the Laws of the Land, and before the Judges aforesaid. And these are the fruits, which government politick and regall convoyned, doth bear and bring forth: Whereof now appear evidently unto you the experiences of the effects of the Law which some of your progenitors travelled to abolish. Before also you saw plainly the effects of the other Law, which they with such earnest endeavour laboured to advance and place in stead of this Law, so that by the fruits of them both, you may know what they are: And did not ambition, riot, and wanton lust, which your said

enormi, nisi *secundum leges terræ illius, & coram Judicibus* antedictis. Et hii sunt *fructus*, quos parit regimen *politicum & regale*: Ex quibus tibi jam apparent experientiæ effectus legis, quam quidam progenitorum tuorum abjicere conati sunt.

Superius quoque tibi apparent effectus legis alterius, quam tanto zelo, loco legis istius, ipsi nisi sunt inducere, ut ex fructibus earum tu agnoscas eas: Et, nonne ambitio, luxus, & libido quos prædicti

progenitores tui, regni bono præferebant, eos ad hoc commercium concitabant? Conſidera igitur, *Princeps optime*, & jam alia, quæ ſequentur.

progenitors eſteemed above the wealth of the Realm, move them to this alteration? Conſider therefore, moſt worthy Prince, and that earneſtly this that followeth.

¶ Chap. 37. *A compariſon of worthineſs of both the regiments.*

SAnctus *Thomas* in libro, quem Regi Cypri *de regimine principũ* ſcripſit, dicit: *quod Rex datur propter regnum, & non regnum propter Regem*, quo omnis poteſtas regia referri debet ad bonum regni ſui quod effectivè conſiſtit in deſenſione

SAint Thomas in his book which he wrote to the king of Cyprus, of the regiment of Princes, ſaith, that the King is given for the Kingdome, and not the kingdome for the King, Whereupon it followeth, that all kingly power muſt be applyed to the wealth of his kingdome, Which thing in effect conſiſteth, in the defence

defence thereof from foreign invasions, and in the maintenance of his subjects, and their goods, from the injuries and extortions of the inhabitants of the same. Wherefore, that king, which is not able to perform these things, must of necessity be judged impotent and weak. But if he be so overcome of his own affections and lusts, or so oppressed with poverty, that he cannot withhold his hands from the pilling of his subjects, whereby himself impoverisheth them, and suffereth them not to live and to be sustained upon their own substances: how much more weak or feeble is he in this

ejusdem ab exterorum incursibus, & in tuitione regnicolarum & bonorum suorum ab indigenarum injuriis & rapinis. Quare, Rex, qui hæc peragere nequit, impotens est necessario judicandus. Sed si ipse, passionibus propriis, aut penuria, ita oppressus est, quod manus suas cohibere nequit à depilatione subditorum suorum, quo ipsemet eos depauperat, nec vivere finit & sustentari propriis substantiis suis: quanto tunc impotentior

ille judicandus eſt, quam ſi eos defendere, ipſe non ſufficeret erga aliorum injurias? Revera, Rex talis, nedum impotens, ſed & ipſa impotentia, dicendus eſt: & non liber judicari poteſt, tantis impotētiæ nexnbus vinculatus. E regione, Rex liber & potens eſt, qui incolas ſuos erga exteros, & indigenas, eorum quoque bona & facultates, nedum erga vicinorum & concivium rapinas defendere ſufficit, ſed erga propriam opreſſionem, & rapinam,

reſpect to be judged, then if he were not able to defend them againſt the injuries of others: Truely, ſuch a King may well be called, not onely feeble, but eben very feebleneſs it ſelf: nor is not to be judged free, being tied with ſo many bands of feebleneſs. On the other ſide, that King is free and of might, that is able to defend his ſubjects, as well againſt ſtrangers, as againſt his own people: and alſo their goods and poſſeſſions, not onely from the violent and unlawfull invaſions of their own countrymen and neighbours, but alſo from his own oppreſſion and extortion, though

though ſuch willful luſts and neceſſities do move him to the contrary. For who can be more mighty or more free, then he, that is able to conquer and ſubdue, not onely others, but alſo himielf? Which thing a King, whoſe governance is politick, can doe and ever doth. Thus moſt worthy Prince, it appeareth unto you by the effect of experience, that your progenitors, which were thus minded to renounce their politick government, could not thereby not onely not obtain the might and power, which they wiſhed, that is to ſay, increaſe thereof, but rather they ſhould have endangered, and greatly hazarded, the wealth

licet ſibi paſſiones neceſſitateſque hujuſmodi reluctentur. *Quis enim potentior liberiorve eſſe poteſt, quam qui, non ſolum alios, ſed & ſe ipſum ſufficit debellare?* quod poteſt, & ſemper facit, Rex *politice* regens populum ſuum. Quare experientiæ effectu tibi conſtat, *princeps*, progenitores tuos, qui ſic politicum regimen abjicere ſatagerunt, non ſolum in hoc non potuiſſe nanciſci potentiâ, quam optabant, videlicet ampliorem, ſed & ſui bonum, ſimiliter & bonum Regni ſui, per hoc,

hoc, ipsi discrimini exposuissent, & periculo grādiori. Tamen hæc quæ jā de experientiæ effectu practicata, potentiam regis, regaliter tantum præiudētis exprobrare vidētur, non ex legis suæ defectu processerunt, sed ex incuria negligētiaque taliter principātis. Quare, ipsi dignitatē illam potentia non minuunt, à dignitate regis politice regulātis, quos paris esse potentiæ, in prædicto *tractatu de natura legis Natura*, luculenter ostendi. Sed potentiam regis regaliter tantum principantis difficias well of themselves, as also of their Kingdome. Notwithstanding these things now practised, which, as touching the effect of experience, doe seem to blemish the power of a king ruling all alone regally, never proceeded of the default of their law, but of the careless demeanour, and negligent lowsnes of such a Ruler. Wherefore, that dignity is not hereby in power imbased under the dignity of a politick Governour, which both, in my foresaid treatise of the nature of the Law of nature, I have plainly prowed to be in power equal. But the premises do most evidently declare it to be a matter of much more difficulty for a king whose

whose rule is only regal, to exercise his power, and that both he and his people stand in much lesse security, and therefore it were not to be wished of a wise king, to change a politick regiment into that government, which is onely regall. And according to this, the foretold Saint Thomas wisheth that all the kingdomes of the would were ruled by politick governance.

lioris esse exercitii, ac minoris securitatis sibi & populo suo, illa clarissime jã demonstrant, quo optabile non foret regi prudenti, regimen politicum pro tantùm regali commutare. Unde & sanctus *Thomas* supradict⁹ optare cẽsetur, ut omnia mundi regna politice regerentur.

¶ Chap. 38. *The Prince breaketh the Chancellour of his tale.*

BEar with me, I beseech you good Chancellour, quoth the Prince,

TUnc *princeps*: parce, obsecro, Cancellarie, quod

quod te ad tantam à propoſito tuo digreſſionem compuli quæſtionibus meis: mihi namque perutilia ſunt, quæ hac occaſione exaraſti, licet te parũper retardaverint à meta intẽtionis tuæ ad quam ut tu jam celerius properes, flagito, & primo ut aliquos alios caſus, in quibus, legũ Angliæ, & Civiliũ diſcrepant ſentẽtiæ, ut promiſiſti & cœpiſti, mihi enarres.

in that with my queſtions I have drawn you ſo far from your purpoſe: For, the things which by this occaſion you have diſcuſſed, are to me right profitable, though they have ſomewhat ſtayed you, and pulled you back from the end of your intent, Whereunto I pray you now make haſt: and firſt as you promiſed, and as you have begun, open unto me ſome other caſes wherein the ſentences of the laws of England, and of the Civil laws, do diſagree.

¶ Chap. 39. *The ſecond Caſe, wherein the Civil Laws, and the Laws of England, diſagree in their judgement.*

Accor-

According to your request, most noble Prince (quoth the Chancellour) I will open unto you certain other cases, wherein the said Laws disagree. Howbeit, whether of the same Laws in their judgements, excelleth the other, that will I leave to your own determination.

The Civil Law doth legitimate the child born before matrimony, as well as that which is born after: and giveth unto it succession in the Parents inheritance: But to the child born out of matrimony, the Law of England alloweth no succession, affirming it to be naturall only, and not lawfull. The Civilians in this case, advance their Law,

Cancellarius: Quosdã casus alios, in quibus dissentiunt Leges prædictæ, ut petis *princeps*, deregere conabor. Sed tamen quæ legũ earũ præstãtior sit in judiciis suis, non meo sed arbitratui tuo relinquam. *Prolem ante matrimonium natam, ita ut post, legitimam, lex civilis, & succedere facit in hæreditate parentum*: sed prolem, quam matrimoniũ non parit, *succedere non finit lex Anglorum*, naturalẽ tantũ eam esse, & non legitimam proclamans. Civilistæ in casu hoc, legẽ eorum extollunt, quia

quia incitamẽtũ eam esse dicunt, quo matrimonii sacramẽto cesset peccatum, per quod alias duorũ animæ interirẽt: præsumendum quoque esse dicunt, tales fuisse contrahentium animos in primo eorum concubitu, quales esse demonstrat subsequens sacramentũ. Ecclesia etiã fœtus hujusmodi habet pro legitimis. Hæc ni fallor, tria fulcimenta sunt majora, quibus ipsi approbãt, defẽdũtq; legẽ suam. Ad quæ sic respondent *legis Angliæ periti*: primo dicunt quod *peccatum primi concubitus*, in casu proposito,

alledging that by mean thereof, the sacrament or state of matrimonie comming in place, extinguisheth the former sinne, whereby else the soules of two persons should have perished: And it is to be presumed, say they, that they were at their first copulation both so minded, as the sacrament ensuing afterward declareth. The Church also accepteth such children for legitimate. These, I trow, are the three strongest reasons, whereby they maintain and defend their Law. Which are thus answered by the Lawyers of England: First, they say, that the sin of the first carnal action, in the case propounded, is not purged by the ma-

matrimonie ensuing, though by the worthynes thereof the sinners punishment is somewhat abated. They say also, that they which thus do sin, are so much the lesse repentant therefore, in as much as they perceive the Laws to favour and bear with such transgressors: And upō this consideration, they are made the readier to commit sin: thereby breaking the commandements both of God and of the Church. Wherefore this Law doth not only participate with the offence of sinners, but also swerveth from the nature of a good Law. Forasmuch as a Law is a holy stablishment, commanding things honest, and forbidding the contrary:

non purgatur per subsequens matrimonium, licet ejus merito delinquentium quedam modo minuatur pœna. Dicunt etiā qd *peccati illius conscii, tantomin⁹ inde pœnitent*, quō leges trāsgressoribꝰ illis favere cōsiderāt: Quali etiam consideratiōe, *proclivieres ipsi redduntur ad cōmittendum peccatum*, per qd, nedum Dei, sed & ecclesiæ præcepta negligūt. Unde lex illa, nedum delinquentiū participat culpam, sed & legis bonæ naturam ipsa declinat: cum lex sit *sanctio sancta jubens honesta, & prohibens contraria*: qui-

qualia ipſa nō prohibet, *ſed potius ad inhoneſta animos labentium invitat.* Nec vallari poteſt lex iſta per hoc, qd eccleſia fœtus hujuſmodi pro legitimis habet. Pia nāq; mater illa, in quāplurimis diſpenſat, quæ fieri ipſa non cōcedit. diſpenſativa enim laxavit Apoſtol⁹ virginitatis fræna qd cōſulere noluit, cū oēs ipſe voluerit, ut ſe, virgines permaneſſe. Et abſit, ut mater tanta, a filiis ſuis in caſu iſto pietatem ſuā cohiberet, dum ſæpe ipſi, etiā legis hujus civilis fomento cōcitati, incidūt in peccatum.

Which this Law doth not, but rather allureth the minds of ſinners to diſhoneſty. Neither can it be any defence to this Law, that the Church accepteth ſuch Children for legitimate. For that loving mother diſpenſeth in many things, which ſhe licenſeth to be done. And it was by way of diſpenſation, that the Apoſtle ſetteth Virgins at liberty, whereunto he would not counſell them, rather wiſhing all to continue Virgins like himſelf. And God forbid, that ſo great a mother, ſhould in this caſe withdraw her tender love from her children, which by the inticement of this Law do many times fall into ſin.

And

And by the matrimony ensuing, The Church is informed that the parties so marrying are penitent and sorry for the offence passed, and are willing in time to come, through matrimony, to live continent. But the Law of England in this case, worketh a much contrary effect. For it provoketh not to sin, nor cherisheth or maintaineth sinners, but putteth them in fear, and to keep them from sin threateneth punishment: for the wantonness of the flesh hath no need of allurement, but rather of discouragement: because the lusts of the flesh are wanton, and almost unmeable. And forasmuch as it is impossible for man to live ever in himself,

Et per matrimonium subsequens docetur Ecclesia, contrahentes pœnitere de præterito, & de futuro per matrimonium se velle cohibere. Sed *longè alium*, in hoc casu, *lex Angliæ effectum operatur, dum ipsa non concitat ad peccatum, neque peccantes juvet, sed terret eos, & ne peccent, minatur pœnas*: carnis etenim illecebræ fomento non egent, egent verò frænis, quia irritaméta carnis lasciva & quasi infatigabilia sunt. Et homo, quum individuo perpetuari nequit, perpetuari

naturaliter appetit in ſpecie ſua, quia omne, qd vivit, aſſimilari cupit cauſæ primæ, quæ perpetua eſt & æterna. Unde fit, quod *plus delectatur homo in ſenſu tactus, quo ſervatur ſpecies ejꝰ, quam in ſenſu guſtus*, quo conſervatur individuum. Quare *Noe*, ulciſcens in filium qui ejus pudenda revelavit, nepoti ſuo, filio delinquentis, maledixit, ut inde plus cruciaretur reus, quã proprio poſſit incõmodo: quare *lex, quæ vindicat in progeniem delinquentis, penalius prohibet peccatum quam quæ ſolum delinquen-*

be naturally coveteth to live ever in his like, becauſe every living thing deſireth to be like the firſt and chiefe cauſe which is perpetuall & everlaſting. And hereof it cometh, that man hath more delight & pleaſure in the ſenſe of feeling, whereby his kind is preſerved, then in the ſenſe of taſte, which preſerveth only the particular man. Wherefore Noe, executing vengeance upon his ſon which uncovered his pꝛivities, did curſe his Nephew the offenders child, that thereby the offender might be more grieved then with his own miſhap: Wherefore the Law that puniſheth the offenders iſſue, doth more penally prohibite ſin then that, which plagueth but

but the offender alone. Whereby it may easily be considered with what zeal the Law of England abhorreth unlawfull conjunctions which doth not onely judge the child so gotten to be illegitimate, but also prohibiteth it to succeed in the parents inheritance. Is not this law then chast and pure? And doth it not more forcibly and more earnestly suppresse sin, then the foresaid civil Law, which winketh at the sin of lechery, and leaveth it unpunished?

tem flagellat. Ex quibus cõsiderare licet, quãto Zelo lex Angliæ illicitos prosequitur concubitus, dũ ex eis editã prolẽ, ipsa, nedum judicat non esse legitimã, sed & succedere prohibet in patrimonio parentũ. Nũ quid tunc, lex ista casta non est? & nõ fortius firmiusq; repellit peccatũ, quam facit lex prædicta civilis, quæ cito, & quasi inultum luxuriæ crimen remittit?

¶ Chap. 40. *Special causes, why base born children are not legitimate in England by matrimony ensuing.*

MOreover, the Civil laws say, that your

PRæterea *leges civiles* dicũt, *filiũm natu-*

naturalem tuum esse filium populi, de quo metrit⁹ quidã sic ait. *Cui pater est populus, pater est sibi nullus, & omnes. Cui pater est populus, non habet ipse patrem.*

Et dum prudes talis patrem non habuit tempore nativitatis suæ, quomodo ex post facto ipse patrem nãcisci poterit, natura non novit: quò, si ex fornicatoribus duob⁹, mulier una filios peperit duos, quã postea, unus ex concubinariis illis ducat in uxorẽ, quis ex filiis hiis duob⁹, per matrimonium illud legitimatur? *Opinio suadere potest*,

natural or bastard son is the son of the people. Whereof a certain Petritian writeth in this wise.

To whom the people father is, to him is father none and all:

To whom the people father is, well fatherless we may him call.

And while such a child had no Father at the time of his birth, surely nature knoweth not how he could afterward come by a Father: For, if one woman should bear two children of two Fornicatours, and the one of them should afterward marry her: Whether of these two children should by this marriage be legitimate? Opinion may somewhat perswade, but

but reason cannot finde: seeing the time was once, when both those children, being judged the children of the people, did not know their fathers. It were therefore unreasonable, that a child afterward born in the same wedlock, whose generation cannot be unknown, should be disherited, and that a child which knoweth no father, should be heir to the father and mother of the other, specially in the realm of England, where the eldest son onely injoyeth the fathers inheritance. And an indifferent Judge would think it no lesse unreasonable, that a base born child should be equally matched with a lawfull begotten child in

sed ratio reperire nequit, dum ambo filii illi populi fœtus judicati, semel parentes ignorabant. Incósonum propterea videretur, quod in matrimonio illo extunc ab eadē muliere natus, cujus generatio ignorari nō poterit, expers esset hæreditatis, & filius nescius genitoris sui succederet patri & matri ejus, maximè infra regnū *Angliæ*, ubi *filius senior solus succedit in hæreditate paterna*, & non minus incōgruum esse sentiret arbiter æquus, si filio ex stupro, æqualiter participaret cum filio ex legitimo thoro,

hæreditatem, quæ jure civili inter maſculos dividenda eſt. Nam *ſanctus Auguſtinus* xvi. *lib. de Civitate Dei*, ſic ſcribit: *Abraham omnem cenſum ſuum dedit Iſaac filio ſuo, filiis autem concubinarum dedit dationes:* Ex quo videtur innui, qd ſpuriis non debetur hæreditas, ſed victꝰ neceſſitas. Hæc ille. Sub nomine vero ſpurii, denotat *Auguſtinus*, omnem fœtũ illegitimũ, qualiter & ſæpius facit ſcriptura ſacra, quæ neminem vocat baſtardum. Ecce, differentiam non minimam ſentit *Augu-*

the inheritance, which by the Civil laws can be divided but onely among male children. For Saint Auguſtine in the xvi. book de Civitate Dei writeth thus: Abraham gave all his ſubſtance to his ſon Iſaac: and to the ſons of his concubines he gave gifts: Whereupon ſeemeth to be meant, that to baſtard children there is no inheritance due, but onely a neceſſary living. Thus ſaith he. And under the name of a baſtard child, S. Auguſtine underſtandeth all unlawfull iſſues, and ſo doth holy Scripture alſo in divers places, calling none by the name of a baſtard. Loe, Saint Auguſtine thinketh no ſmall difference to be,

and

and ſo thinketh Abraham too, between the ſucceſſion of a baſtard, and of a ſon lawfully begotten. Yea, holy Scripture reprehendeth all unlawfull children under this Metaphor, ſaying, baſtard ſlips ſhall take no deep root, nor lay any faſt foundation, in the fourth chapter of the book of Wiſdome. The Church alſo reproveth the ſame, in that it admitteth them not to holy orders, And if ſo be, that the Church do diſpenſe with ſuch a one, yet it permitteth not him to have any dignity or preeminence in the Church, Wherefore it is convenient, that mans law in the benefit of ſucceſſion, ſhould cut them ſhort,

ſtinus, ſentit & *Abraham*, inter ſucceſſionem ſpurii, & filii ex legitimo concubitu. Cæterùm, omnes filios illegitimos reprehendit *Scriptura ſacra*, ſub Metaphora hac, dicens, *ſpuria vitulamina non dabunt radices altas, nec ſtabile fundamentum collocabunt*, Sapientiæ iiii. Reprehendit & eccleſia, quæ eos à ſacris repellit ordinibus, & ſi cum tali diſpenſaverit, non eum tamē permittit dignitate præeſſe in eccleſia Dei Congruit idcirco legi hominum in ſucceſſionis beneficio, minuere,

quos eccleſia indignos judicat ſacro ordine, & quos ipſa repellit ab omni prælatia: ipſos etiã quos Scriptura ſacra in natalibus, minoratos judicat a legitimè procreatis. *Gedeon* autem *virorum fortiſſimꝰ*, lxx. filios in matrimonio legitur procreaſſe, & nõ niſi unum ſolum habuiſſe ex cõcubina, filius tamen ipſe concubinæ, omnes filios illos legitimos nequiter peremit, excepto uno ſolo, Judicũ ix. Quo in notho uno, plus malitiæ fuiſſe deprehẽditur, quã in filiis legitimis lxix. Tritũ etenim proverbium

whom the Church judgeth unworthy to be receiued in holy orders, and reiecteth from all prelacy: yea, whom holy Scripture iudgeth, as touching their birth, much inferiour to them that be lawfully begotten. We read, that Gedeon the puiſſant begat threeſcore and ten ſons in wedlock, and but one onely out of wedlock, yet this miſbegotten child wickedly ſlew all thoſe lawfully begotten children, one onely excepted, Iudges the ninth chapter: Whereby it is perceiued, that there was more wickednes in one Baſtard child, then in lxix. lawfull ſons. For it is a common ſaying: If a baſtard

ſtard be good that cometh to him by chance, that is to wit, by ſpeciall grace, but if he be evill, that cometh to him by nature. For it is thought, that the baſe child draweth a certain corruption and ſtain from the ſin of his parents, without his own fault, as all we have received of the ſin of our firſt parents, much infection, though not ſo much, Howbeit the blemiſh, which baſtards by their generation do receive, much differeth from that wherein lawfull children are born. For their conception is wrought by the mutuall ſinfull luſt of both parents, which in the lawfull and chaſt copulation of married couples taketh no place, The

eſt, *ſi bonus eſt baſtardꝰ hoc ei venit a caſu, videlicet gratia ſpeciali, ſi autem malus ipſe fuerit, hoc ſibi accidit a natura.* Corruptionem namq; & maculam quandam cenſetur illegitimus partus contrahere a peccato genitorum ſuorum ſine culpa ejus, ut maximā nos cōtraximus omnes a crimine primorū parentum, licet non tantam: aliam tamē nothi quam legitimi, contrahunt maculam ex genitura ſua, eorū namq; generationē mutua utriuſq; parētis libido culpabilis operatur, qualiter in legitimis caſtiſq; amplexibus

ibus conjugatorum ipſa nō ſolet debacchari, mutuum ſane & cōmune eſt peccatum taliter fornicātium, quo primo ſimilatum peccato magis ſævit in fœtū, quam peccatum aliter ſolitarieq; peccātiū ut exinde natꝰ, potiꝰ peccati filiꝰ dici mereatur, quam filiꝰ peccatorū, Quare *ſapientiæ liber*, generationes has duas diſtinguens, de generatione legitima ſic affatur: *O quam pulchra eſt caſta generatio cum claritate! Immortalis eſt enim memoria illius, quoniam apud deum nota eſt & apud homines.* Altera vero ſin of ſuch fornicators is committed by the mutuall conſent of them both. Wherefore it is likened to the firſt ſin, and cleaveth more cruelly to the child, then the ſin of ſuch as do otherewiſe offend alone: ſo that the Child ſo begotten deſerveth to be called the child of ſin, rather then the child of ſinners, wherefore the Book of Wiſdome making a difference betwæn theſe two generations, of the lawfull generation it ſaith thus: O how fair is a chaſte generation with vertue! The memoriall thereof is immortal: For it is known with GOD and with men. But the other is not known with men, ſo

to that the children thereof born, are called the children of the people. Of which base generation, the same book thus speaketh: All the children, that are born of wicked parents, are witnesses of wickedness against their parents, when they be asked. For being demanded of their parents they open their sin, even as the wicked son of Noe uncovered his fathers privities. It is therefore believed touching the blind born, of whom the Pharisies in the ninth Chapter of Saint Johns Gospell said, thou art altogether born in sin, that he was a bastard, who wholly is born of sin: & where it followeth

nó est nota apud homines, quo filii ex ea nati, filii populi nominãtur. De generatione utiq; illa altera, liber ille dicit: *ex iniquis oĕs filii qui nascunt', testes sunt nequitiæ adversus parentes suos in interrogatione sua.* (Sapientiæ eodẽ iiii cap.) interrogati etenim de parẽtib⁹ suis, eorũ ipsi revelant peccatũ, ut filiꝰ *Noe* nequã revelavit pudẽda patris sui. Creditur idcirco cæcum illum natum de quo Pharisæi, Jo. ix. dixerunt, tu in peccatis natus es totus, fuisse bastardũ, qui nascitur totaliter ex peccato, & dum subditur

ditur, & tu doces nos, videtur eos intellexiſſe, baſtardum non ut legitimum, in naturalibus eſſe diſpoſitum ad ſcientiam & doctrinam. Non igitur bene dividit lex illa, quæ baſtardos a nativitate, & legitimos parificat, in hæreditate paterna, cũ eos diſpares judicet eccleſia in hæreditate Dei, ſimiliter & diſtinguat ſacra ſcriptura in forma prænotata, dividatq; natura in donis ſuis, ſignans naturales, tãtũ nævo quaſi naturali quodam, licet latente, in animis ſuis. Quũ igitur legũ iſtarũ, *Anglicarum*, viz. & *Ci-*

doeſt thou teach us, It ſeemeth that thereby may be underſtood, that a baſtard hath no like naturall diſpoſition to knowledge and learning, as a lawfull child hath. Wherefore, that law maketh no good diviſion, which in the fathers inheritance maketh equall baſtard children and lawfull children, whom the Church in Gods inheritance maketh unequall. Betwæn whom alſo Scripture putteth a difference in form above mentioned: & when nature in her gifts severeth, marking the naturall or baſtard children, as it were, with a certain privy mark in their ſouls. Whether therefore of the two laws, Engliſh or Civil, do you now imbrace, moſt

most noble Prince, and judge to have the preheminence in this case?

vilium in casu hoc, tu *princeps illustrissime*, amplecteris & judicas præferendâ?

¶ Chap. 41. *The Prince alloweth the Law, which doth not legitimate children born before matrimony.*

SUrely, even to that law do I give the preferment, quoth the Prince, which is of more force to abandon sin out of the Realm, & to advance vertue. Those also in the benefit of mans law do I suppose abject & base, whō the Law of God considereth unworthy, and whom the Church in her benefits reiecteth, and nature also judgeth more prone unto sin. I think ỹ do not judge amiss, quoth the Chancellour. Wherefore I will rehearse yet other cases,

PRinceps: Revera eam quæ *fortius a regno peccatum eliminat, & firmius in eo virtutem conservat.* Arbitror etiã illos in legis humanæ beneficiis minorandos, quos lex divina indigniores cõsiderat, & quos postponit ecclesia in beneficiis suis, natura quoq; procliviores judicat ad peccãdũ. Cancellarius: Recte æstimo te sentire, quare & casus alius me-

memorabor, in quibus discrepant hæ leges duæ.

wherein the said Laws disagree.

Chap. 42. *The third Case wherein the Laws aforesaid disagree.*

LEges civiles sanciunt, quod *partus semper sequitur ventrem*, ut si mulier servilis conditionis nubat viro conditionis liberæ, Proles eorum servꝰ erit: & è converso, servus maritatꝰ liberæ, non nisi liberos gignit. Sed lex Angliæ *nunquam matris, sed semper patris conditionem imitari partum judicat.* Ut ex libera, etiã ex verna, nõ nisi liberũ liber generet, & non nisi servum in matrimonio procreare potest servus.

THe civil Laws decree, that the issue ever followeth the womb, that is to say, the mother. As for example, if a bond-woman be married to a free man, their issue shall be bond: And contrariwise if a bondman marieth a free womã, he begetteth none but free children. But the Law of England never judgeth that issue to follow the mothers condition, but alway the fathers. So that a free man begetteth free children aswel of a bondwoman, as of a free woman, and a bondman in wedlock can beget none other but bond children.

Whe-

Whether of these laws is better think you in their sentences? It is a cruel law, wch without offence subdueth the free mans child to bondage. And no lesse cruelty is to be thought in the law, which without any desert oppresseth the free womans child with bondage. Yet the Civilians say, that the Civil Laws in these their judgements do excel. For an evil tree, say they, cannot bring forth good fruits, nor a good tree bear evil fruits. And by the consent of all Laws it is agreed, that every plant yieldeth to the nature of the ground wherein it is planted, the child also hath much more certain and sure knowledge of the mother, then of the

Quæ, putas, legum harum melior est in sentētiis suis? crudelis est lex, quæ liberi prolē sine culpa subdit servituti. Nec minus crudelis censetur, quæ liberæ sobolē sine merito redigit in servitutem. *Legistæ* vero dicūt, leges civiles pvalere in his judiciis suis. Nā dicūt, qd *non potest arbor mala fructus bonos facere, Neque arbor bona fruct⁹ malos facere.* Ac omnis legis sententia est, qd plantatio quælibet cedit solo quo inseritur, Certior quoq; multo est part⁹, quæ eū suderūt viscera, quā quis eū pater procreavit.

Ad

Ad hæc, *legis Angliæ conſulti* dicunt quod *partus ex legitimo thoro, non certius noſcit matrem quam genitorem ſuũ.* Nã ambæ leges, quæ jam cõtendunt, uniformiter dicunt, quod *ipſe eſt pater, quem nuptiæ demonſtrant.* Nunquid tunc magis eſt conveniẽs, ut filii cõditio ad patris, potius quam ad matris cõditionem referatur, cum de conjugatis dixerat *Adam? erunt ipſi duo in carne una*, qd *dominus* exponens in *Evangelio* ait: *Jam non ſunt duo, ſed una caro*, & cum maſculinum concipiat fœmini-

father. Whereunto the Lawyers of England anſwer on this wiſe: That a child lawfully begotten hath no more certain and ſure knowledge of the mother then of the father. For both theſe laws thus diſagreeing, agree yet in this point, that he is the father, whom wedlock declareth. And is it not then more cõvenient, that the condition of the child ſhould have relation rather to the fathers condition, then to the mothers, ſeeing that Adam ſpeaking of married couples, ſaid: They ſhall be two in one fleſh, which our Lord expounding in the Goſpel ſaith; Now are they not two but one fleſh. And forſomuch as the male, as more worthy, containeth the

the female then the whole flesh so united must have relation to the male as to the worthier, wherefore the Lord called Adam and Eve not by the name of Eve, but because they were both one flesh, he called them both in the name of Adam, the man, as it appeareth in the fift chapter of Genesis. The Civil Laws also hold that women do ever glister with the shining beams of their husbands. Wherefore in the title beginning with these words; Qui se professione excusant, in the 9 Book L. fi. the text saith thus, we advance women with the honor of their husbands, and with the kindred of their husbands we worship them, in the court

num, ad masculinum quod dignius est, referri debet tota caro sic facta una, Quare *Adam* & *Evam* vocavit dominus, *non Evam*, sed quia caro una ipsi erat ambos eos vocavit ipse nomine viri, videlicet, *Adam*: ut patet *Genesis* quinto capitulo. Ipsæ quoq; civiles leges dicunt: quod mulieres semper coruscat radiis maritorum suorum. Unde C. *qui professione se excusant*, libro nono, l. fi text9 sic loquitur: *Mulieres honore maritorum erigimus*, & genere nobilitamus, & forum ex eo-

rum perſona ſtatuimus, & domicilium mutam⁹. Sin autem *minoris ordinis viri poſtea ſortita, priore dignitate privata, poſterioris mariti conſequantur conditionem & domicilium.* Et cū nomen patris, & non matris, gerat proles omnis, & maxime maſculina, Unde tunc provenire poterit, qd filius, ratione matris, amitteret honorem, cōditionemve patris ſui mutaret, cujus tamen nomen ipſe retinebit præſertim dum honore patris ejuſdē ac conditione reſplendeat mater ejus, & dum viri honor vel conditio

we decree matters to paſs in the name of their huſbands, & into the houſe and ſurname of their husbands do we tranſlate thē, But if afterward a woman marry with a man of baſer degree, then loſeth ſhe her former dignity, & followeth the condition of her latter husband. And forſomuch as all children, ſpecially male children, bear the fathers name, and not the mothers, whereof then ſhould it come, that the ſon by reaſon of the mother ſhould loſe the honor, or change the condition of the father, whoſe name nevertheleſſe he ſhall ſtill keep, ſpecially ſeing the mother her ſelf receiveth of the ſame Father, honor, worſhip & dignity, which honor, worſhip, and

dignity

dignity of the husband can never be deteined or impeached through the fault of the wife. Truly that law may well be deemed cruel, which without any cause, committeth to bondage the freemans son, & which, disheriting the innocent son of the innocent free father, adjudgeth his land to an unworthy stranger, which also with the base state of bondage in the son defaceth the name of the free father. Cruel also of necessity must that law be counted, which augmenteth wealdome, and diminisheth liberty or freedome. For liberty is the thing that mans nature ever coveteth. For by man and for sin, did bondage first enter. But freedome is grafted in mans

nunquã per uxoris vitium denigratur. Crudelis nẽpe censeretur lex, quæ fine causa, filiũ liberi servituti committit, & terrã, pro qua liber ille innocens à crimine, sudavit innocẽtis filii sui titulo, non sudanti, tradet extraneo possidendam, ac patris nomen, etiã filii servitutis nota cõmaculat. Crudelis etiã necessario judicabitur lex, quæ servitutem augmentat, & minuit libertatem: Nam *pro ea natura semper implorat humana.* Quia, ab homine, & pro vitio, introducta est servitus. Sed libertas

à Deo hominis eſt indita naturæ. Quare ipſa ab homine ſublata, ſéper redire gliſcit, ut facit omne, quod libertate naturali privatur. Quo ipſe & crudelis judicãd⁹ eſt, qui libertati non favet. Hæc conſiderantia *Angliæ jura*, in omni caſu libertati dãt favorẽ. Et licèt *jura illa judicent eum ſervum, quem ſervus in conjugio ex libera procreavit*, non per hoc, jura illa rigida, crudeliave ſentiri poterunt. Nam mulier, quæ conjugio ſervo ſe ſubjecit facta ei caro una, quo ipſa ut dicunt leges ſupraſcriptæ,

nature of God. Whereof if man be depꝛived, he is ever deſirous to recover the ſame again, like as all other things do, that are ſpoiled of their natural liberty. Wherefoꝛe wicked and cruel is he to be deemed that favoꝛeth not liberty. Which things the Laws of England, duely conſidering doe in all reſpects ſhew favour to liberty. And though the ſame Laws judge him thrall, whom a bondman in wedlock begetteth of a free woman, yet hereby cannot theſe Laws be reputed ſeꝛere and cruel. Foꝛ a woman, which by marriage hath ſubmitted her ſelf to a bondman, is made one fleſh with him, wherefoꝛe as the foꝛeſaid Laws determine, the

she followeth the state of his condition, and of her own free will hath made her self a bond woman, not forced thereto by the Law, much like to such, as in Kings Courts become bondmen, or sell themselves into bondage without any compulsion at all. And how then can the Law determine the child to be free, whom such a mother hath thus born: For the husband can never be in so much subjection to his wife, though she be a right great Ladye, as this woman is subject to the bondmã, whom she hath made her Lord, insomuch as the Lord saith to all wives: Thou shalt be under the power of thy

ejꝰ cõsequitur cõditionem, & proprio arbitrio se fecit ancillam, sed potiùs servam nullatenus à lege coacta, qualiter & faciunt, qui se servos reddunt in curiis regum, vel in servitutem se vendunt, nullatenus ad hoc compulsi. Quomodo tunc, liberũ sancire possunt leges filium illum, quẽ mater talis, taliter est enixa? Nunquam enim sic subjectꝰ est vir uxori, *licet maxima Domina ipsa fuerit*, ut subjecta est libera hæc servo, quem ipsa facit dominum ejus, dicente *Domino* uxori omni, *Eris sub*

poteſtate viri, & ipſe dominabitur tibi. Et quid eſt, quod dicunt legiſtæ illi de fructu arboris bonæ vel malæ, nõne conditionis liberæ vel ſervilis eſt uxor õnis, qualis eſt maritꝰ ejꝰ? Et *in cujus ſolo plantavit maritus, dum uxor ejus eſt ſibi caro una? Nonne in proprio?* Quid ſi ſurculum dulcis naturæ inſeverit ipſe ſtipiti arboris acerbæ: Dumodo arbor illa ejꝰ eſt, *nonne fructꝰ* (licet ex ſtipite redolẽt) *ſemper ſint fructus ejus:* Sic ex muliere genita proles, mariti eſt progenies, fuerit mater libera vel ancilla. Sanciũt

husband, And he ſhall have dominion over thee; And what is it that theſe Civilians ſay of the fruit of a good or evill tree, Is not every wife of a free or thrall condition, according to the ſtate of her husband? And in whoſe ground hath the husband planted, while his wife is one fleſh with him? Not in his own? And what then if he have graffed a ſlip of a ſweet nature in a ſtock of a ſoure tree: So that the tree be his own, ſhall not the fruits, though they ever ſavor of the ſtock, be his own fruits? So the child which the wife beareth is the husbands iſſue, whether the wife be free or thrall. Howbeit the Laws of England

land decree, that if a bond-woman, without the consent of her lord, be married to a freeman, though they cannot be divorced, cause the Gospel saith, whom God hath conjoyned let no man separate: yet shall her lord recover against the same freeman all the dammages, that he hath sustained by reason of the loss of his vassal or bondwoman. This now, as I suppose, is the sum and form of the law of England in the case now declared. What therefore is your opinion most excellent Prince, in the same case? And whether of these two laws do you esteem to be of more worthiness and excellency?

tamē leges Angliæ, qd *dominus nativæ à libero in matrimoniū sumptæ ipso inconsulto*, cum eam repudiare nequeat, dicēte Evangelio: *quos Deus conjunxit, homo non separet*: recuperabit versus liberum illum, omne damnū, qd ipse sustinuit ratione deperditi servitii, & amissæ ancillæ. Hæc jā ut æstimo, est sūma & forma legis Angliæ, in casu jā enarrato. Quid igitur jam tibi videtur, *Princeps*, in casu isto? & quæ legū prædictarū præstantior aut eligibilior à te judicatur?

¶ Chap. 43. *The Prince approveth the Law, whereby the issue followeth not the womb.*

Princeps, Anglorum legẽ in hoc caſu Romanorũ legi præſtare dubitare nos ratio nõ permittit. Et optatior mihi ſemper eſt lex, quæ favorem potius quã rigorẽ, partubus adminiſtrat. Recolo nãq; illiꝰ juris regulã, quæ ſic dicit: *odia perſtringi, & favores convenit ampliari.* Cancellarius, Et bene quidem. Aliũ adhuc caſum tibi referam, princeps, in quo concertant leges iſtæ, & nõ multum poſtea tũc deſiſtã, ne oneroſũ tibi ſit, tãtis ſolicitari ſciſmatibꝰ, etiã ne in faſtidiũ tibi veniat diſceptatio mea

REaſon ſuffereth us not to doubt (quoth the Prince) but that in this caſe the law of England ſurmounteth the Roman Law. And that Law is to me more allowable, which unto children ſheweth favour, rather then rigour. For I remember a rule of the Law, that ſaith: It is behoveable that cruell hate be repreſſed, and favour advanced. And good reaſon (quoth the Chancellour) Yet will I expreſſe unto you another caſe, wherein theſe Laws are repugnant, And ſhortly after I will make an end, leſt it be tedious to you, to be troubled with ſo many diſagreeings, and leſt you happen to be wearied

with

with my over long talk.

diutius protelata-

¶ Chap. 44. *The fourth case, wherein the said Laws vary.*

The Civil laws commit the tuition of Orphans to the next of their bloud, whether the kindred grow on the fathers side, or on the mothers side, that is to say, to every man according to the degree and order, wherein his turn is next to succeed the pupill in his inheritance. And the reason of this law is for that no man will behave himself more tenderly or more favourably in the carefull education of the Infant, then he that is next of his bloud.

LEges civiles *impuberum tutelas, proximis de eorum sanguine, committunt*; agnati fuerint seu cognati, unicuique videlicet secundum gradum & ordinem, quo in hæreditate pupilli succeſſurus est. Et ratio legis hujus est, quia nullus, tenerius favorabiliusve infantem alere fataget quam proximus de sanguine ejus.

Ta-

Tamen longe aliter *de impuberum cuſtodia* ſtatuunt leges Angliæ. Nam ibidem, *ſi hæreditas, quæ tenetur in Socagio, deſcendat impuberi ab aliquo agnatorum ſuorum, non erit impubes ille ſub cuſtodia alicujus agnatorum ejus, Sed per ipſos cognatos, videlicet, conſanguineos ex parte matris ipſe regetur.* Et ſi ex parte cognatorum hæreditas ſibi deſcenderit, pupillus ille cum hæreditate ſua, per proximum agnatum, & non cognatum, ejus cuſtodietur, Quouſq; ipſe fuerit adultus. Nam leges illæ

Nevertheleſs the Lawes of England touching the cuſtody of Orphans, do determine much otherwiſe. For there, if an inheritance, being holden in Socage deſcend to an Orphan, from any of the kindred of his Fathers ſide, the ſame Orphan ſhall not be under keeping of any of that kindred, but he ſhall be governed by his cofins or kinsfolk of his mothers ſide. And if the inheritance come to him from any kinſman of his mothers ſide, then the pupill with his inheritance ſhall be in the cuſtody, till he come to lawfull age, of him that is next of his kin of his fathers ſide, and not of any kinſman of the mothers ſide. For our lawes ſay,

say, that to commit the tuition of an infant to him, that shall next succeed him, is like as if one should betake a lamb unto a Wolfe to be devoured. But if the inheritance be not holden in socage, but by Knights service, then by the Laws of the same land, the child with his inheritance shall be in the keeping of none of his kindred of either side, but in the custody of the Lord of the fee, untill he come to the age of one and twenty years. And think you, that any man can or will better instruct and train up the child in feates of Armes, which by reason of his tenure, he is bound to yield to the Lord of his fee,

dicunt qd *committere tutelam infantis illi qui est ei proxime succes sarius, est quasi agnum committere lupo ad devorandum.* Sed si hæreditas illa, non in socagio, sed teneatur per *servitium militare*, tũc per leges terræ illi⁹, infans ipse & hæreditas ejus non per agnatos neq; cognatos, sed *per dominum feodi illius custodientur, quousque ipse fuerit ætatis viginti & unius annorum.* Quis, putas infãtẽ talẽ, in *actibus bellicis*, quos facere ratione tenuræ suæ ipse astringitur domino feodi sui, melius instruere poterit, aut velit,

quam

quam dominus ille, cui ab eo ſervitium tale debetur? & qui majoris potentiæ & honoris æſtimatur, quâ ſunt alii amici propinqui tenentis ſui? Ipſe namq; ut ſibi ab eodem tenente melius ſerviatur, diligentē curā adhibebit: & meliꝰ in his eum erudire expertus eſſe cenſetur, quam reliqui amici juvenis, rudes forſan & armorum inexperti, maxime ſi non magnum fuerit patrimonium ejus. Et qd utilius eſt infanti, qui vitam & omnia ſua periculis bellicis exponet in ſervicio domini ſui ratione tenuræ ſuæ,

then the Lord himſelf, to whom ſuch ſervice is by him due? Which is alſo to be judged of more power and honor, then the friends and kinſfolk of his tenant. For he, to the intent he may in time to come be the better ſerved of his tenant, will uſe the more diligence towards him, And it is to be preſumed, that he is more expert & skilfull to trade him in theſe things, then his other friends, rude peradventure & unpractiſed in martiall feats, ſpecially if his patrimony be but ſmall. And what can be more profitable for the child, which by reaſon of his tenure, ſhall in ſervice of his Lord, endanger his life

and

and all that he hath, in the acts of Chivalry, then in his nonage to be brought up in the discipline and practice of the same, seeing that in his ripe age he shall not be able to abolde the adventure thereof? And to say the truth, it shall be no small commodity for the Realm, that the inhabiters of the same be well expert in the knowledge of Arms. For, as saith the Philosopher, every man doth the things boldly, wherein he assureth himself to be skilfull. And do you not then, most noble Prince, allow this Law, and commend it above the other now described?

quam in militia actibusque bellicis imbui, dum minor est, cum actus hujusmodi ipse in ætate matura declinare non potent? Et revera, non minime erit regno accommodum, ut incolæ ejus in armis sint experti. Nam, ut dicit Philosophus, *audacter quilibet facit, quod se scire ipse non diffidit.* Nunquid tunc legem hanc, tu approbas, *fili Regis*, & collaudas super Legem alteram jam descriptam?

Here

¶ Chap. 45. *Here, the Prince commendeth the education of Noble mens children being Orphans.*

P*Princeps*: Immo, Cancellarie, legem hanc, plusquã alteram, ego laudo. Nam, in ejus parte prima quam tu notasti, caute magis, quam civilis, ipsa providet securitati pupilli. Sed tamẽ in ejus parte secunda, multo magis ego delector, nam ab ea est, qd in Anglia, nobilium progenies de facili degenerari nõ potest, sed *probitate* potius, *strenuitate*, & *morum honestate*, antecessores suos ipsa transcender, dum in altiori,

YEs, good Chancellor, quoth the Prince, this Last I do allow much more then ỳ other. For in the first part of it, which you noted, it provideth much more warily for the security and safegard of the pupil, then the Civil law doth. Howbeit in the second part of the same, I do take more delight. For thereof it cometh to pass, that in England Noble mens children cannot easily degenerate, but rather pass and surmount their ancestors in vertue, in courage, and in honest conditions, forsomuch as they are brought up and instructed in an higher and

and an honorable Court, then in the houſes of their Parents, though their Parents were peradventure brought up in the like places: For their Parents houſe was never yet like the Lords houſe, whom as well the Parents, as alſo the Children ſerved. The Princes alſo of the Realm, being ruled by this Law, and likewiſe other Lords, holding their Land immediatly of the King, cannot lightly fall to wantonneſs and unſeemlineſs, ſeeing that in their childhood while they be Orphanes, they are brought up in the Kings houſe. Wherefore I muſt needs highly praiſe and commend the riches

nobiliorique curia, quam in domo parentum, illa ſit imbuta; licet in domo conſimili forſan parentes ejus educati erant: Quia conſimilis adhuc non erat domus parentum illorũ, domui Dominorum, quibus, ipſi parentes, & ipſi infantes, ſervierũt. Principes quoque regni ſub hac lege regulati, ſimiliter & domini alii à rege immediate tenentes, non poſſunt de levi in laſciviam ruditatemve labi, cum in pueritia, dum Orphani fuerint ipſi, in domo regia nutriũtur. Quare non infime

domus

domus regiæ opulentiam magnitudinemq; collaudo, dū in ea gymnaſium ſupremū ſit nobilitatis regni: ſchola quoq; ſtrenuitatis, probitatis, & morum quib⁹ regnū honoratur. & floret ac cōtra irruētes ſecuratur, etiam formido ipſa erit inimicis & amicis regni. Hoc revera bonum accidiſſe non potuiſſet regno illi, ſi nobilium filii, orphani & pupilli, per paupere amicos parentum ſuorum nutrirentur. Nec regni bono officere poteſt, licet burgenſium filii & aliorū libere tenentium,

a high poꝛte of the Kings Court, in that it is the chiefeſt ſchool within the Realm, foꝛ the Nobility of the Land. It is alſo the Schoolhouſe of manhood, of vertue, and of good manners, whereby the Realm is honoured and flouriſheth, & is pꝛeſerved againſt invaſions: ſo that it is dꝛeaded both of friends and foes: and to be plaine, this great commodity could not have happened to the Realm, if Noble mens childꝛen, being Oꝛphans and pupills, had ben nouriſhed and bꝛought up by the poꝛ friends of their parents. Neither can this be pꝛeiudiciall oꝛ hurtfull to the wealth of the Realm, that the Childꝛen of Burgeſſes,

and

and of other freholders which hold their tenements in ſocage, & are not thereby bound to warfare, are brought up in the houſes of their like friends, as to him, that ſhall thoroughly weigh the matter, it may evidently appear.

qui in ſocagio tenẽt tenementa ſua, quo ipſi ad militiam non aſtringuntur, in domo conſimilium amicorũ ſuorum educãtur, ut perſpicue conſideranti, lucide apparere poteſt.

¶ Chap. 46. *Yet he rehearſed other caſes, where in the foreſaid Laws differ.*

THere be yet divers other caſes quoth the Chancellour, wherein the Laws afore-ſaid do vary. As in that the Civil Laws do judge, open Theft to be ſatisfied by the recompence of fourfold, and privy Theft, by the recompence of double. But the Laws of England ſuffer neither of

TUnc Cãcellarius. Sunt & alii caſus nonnulli, in quib⁹ differũt leges antedictæ. Ut quia leges civiles judicãt *furtum manifeſtum*, per reddition*ẽ* quadrupli: & *furtum non manifeſtum*, per dupli recõpenſation*ẽ*, expiari. Sed leges Angliæ, *neutrum*

facinorum illorum, mitius quam committentis morte puniri permittunt, dummodo ablati valor, *duodecim denariorum valorem excedat*. Item *libertinum*, ingratum, leges civiles in priſtinã redigunt ſervitutẽ: ſed leges Angliæ *ſemel manumiſſum, ſemper liberum judicant*, gratum & ingratum. Alii quoque ſunt caſus hujuſcemodi non pauci, quos jam, ſtudio brevitatis, prætereo. Et neque in hiis duobus caſibus, prædictarum legum præſtãtias ego jam deſcribo, eum non magnæ ſint indagi-

thoſe offences to be more favourably puniſhed then with the offendours death, ſo that the value of the thing ſtollen, be above the value of twelve pence. Alſo a libertine, that is to ſay, freeman, that ſometime was bond, if he become unkind or churliſh, the Civil Lawes reduce him into his former ſtate of ſervitude again: But by the Lawes of England he that is once made free, be he grate or ingrate, is adjudged to enjoy his Freedome ſtill. There be other like caſes alſo not a few, which at this time for brevities ſake I overpaſs. Neither in theſe two caſes do I diſpute the excellencie of the foreſaid Lawes, ſeeing

seeing the qualities of the require no great search. And I doubt not, but the quickness of your wit is such, that it can sufficiently discusse the same.

nis, eorum qualitates, nec diffido, ingenii tui solertiam eas sufficienter posse rimari.

¶ Chap. 47. *The Prince regardeth not the cases now rehearsed.*

NO nor it booteth not, good Chancellour, herein much to tarry, quoth ỳ Prince, For though in England, aswell open, as privy thieves, are commonly put to death, yet cease they not there from stealing, as though they had no fear of so great a punishment. How much less then would they withhold theirs hand from theft,

Princeps. Nec expedit Cancellarie, in hiis multū sudare: quia, licet in Anglia fures clādestini & manifesti passim morte plectantur, nō cessāt ipsi ibidē omnino prædari, ac si pœnā tantam illi minime formidarent. Quanto tunc minus, *se abstinerent a crimine*

ſi pœnam prævideret mitiorem? Et abſit, a ſervitute ſemel evaſum, ſemper deinde ſub minis tremere ſervitutis, maxime ingratitudinis colore, cum ingratitudinum ſpecies vix poterint, præ multitudine, numerari, & *humana natura, in libertatis cauſa favorem ſemper, magis, quam in cauſis aliis, deprecetur.*

Sed jam, Cancellarie, obnixe te imploro, ut amodo omiſſa plurium caſuũ hujuſmodi examinatione, mihi edicas, quare leges Angliæ, tam bonæ, frugi, & optabiles, *in*

if they foreſaw once that the puniſhment were mitigated? And God forbid, that he which once hath eſcaped miſerable ſervitude, ſhould ever after tremble and quake at the threatnings of bondage, ſpecially under the colour of ingratitude or unkindneſs, ſeeing the kinds of ingratitude are ſo many, that they can skant well be numbred: and mans nature in the cauſe of liberty of Freedome, more then in other cauſes, requireth favour.

Wherefore at this time, good Chauncellour, I beſeech you heartily meddle no more with the examination of any ſuch caſes. But now explaine & open unto me why the laws of England, being ſo good,

ſo

so fruitfull, and so commodious, are not taught in the Universities, as the Civil and Canon laws are: and why in the same, none are commenced Bachelors and Doctors, as in other faculties and sciences it is accustomed.

universitatibus non docentur, ut Civiles similiter & Canonū leges: & quare in eisdem, non datur *Baccalauriat⁹* & *Doctoratus* gradus, ut in aliis facultatibus & scientiis est dari consuetum.

¶ Chap. 48. *Here the Chancellour sheweth, why the Laws of England are not taught in Universities.*

IF the Universityes of England, quoth the Chancellour, sciences are not taught but in the Latine tongue: And ẏ laws of that lād are to be learned in iii. several tongues: to wit, in the Englisḥ tongue, in the Frēch tōgue, and the Latine tongue.

CAncellarius: in Univerſitatib⁹ Angliæ, non docentur ſcientiæ niſi in *Latina* lingua: Et leges terræ illius in triplici lingua addiſcuntur: videlicet, *Anglica*, *Gallica*, & *Latina*.

Anglica, quia inter Anglos lex illa maxime inolevit. *Gallica*, quia poſtq; galli, *Duce Wilhelmo Angliæ conqueſtore*, terrã illã obtinuerunt, nõ permiſerũt ipſi eorũ advocatos placitare cauſas ſuas, niſi in lingua, quã ipſi noverunt, qualiter & faciũt omnes advocati in Francia, etiã in curia parliamẽti ibidẽ. Conſimiliter gallici poſt eorũ advẽtum in Angliam, ratiocinia de eorum provẽtibus non receperunt, niſi in proprio idiomate, *ne ipſi inde deciperentur*. *Venari* etiam, & jocos alios exercere, ut *talorũ & pi-*

In the Engliſh tõgue, becauſe the law is moſt uſed, & longeſt cõtinued amõgſt the Engliſhmen. In the Frẽch tongue, becauſe that after the Frenchmen under William the Cõqueror of England had obtained the land, they ſuffered not their men of law to plead their cauſes, but in the tõgue wch they knew, and ſo do all the men of law in Fraunce, yea in the court of Parliamẽt there. Likewiſe the Frenchmen, after their coming into England, received not the arcompts of their revenues but in their own language, leſt they ſhould be deceived therein. Neither had they delight to hunt, and to exerciſe other ſpoꝛts and paſtim.s, as dice play, and the hand ball,

ball, but in their own proper tongue. Wherefore the Englishmen by much using of their company, grew in such a perfectness of the same language, that at this day in such playes and accompts they use the French tongue. And they were wont to plead in French till by force of a certain Statute, that manner was much restrained, But it could never hitherto be wholly abolished, aswell by reason of certain Terms, which pleaders do more properly express in French, then in English, as also for that declarations upon originall writs cannot be pronounced so agreeably to the nature

larū ludos, nō nisi in propria lingua delectabātur. Quo, & Anglici ex frequēti eorū in talib⁹ cōitiva, habitū talē contraxerūt, qd *huc usque ipsi in ludis hujusmodi, & cōpotis, linguā loquunt⁹ gallicanam*: & placitare in eadem lingua soliti fuerūt quousq; mos ille, vigore cujusdā statuti, quā plurimū restrict⁹ est; tamē in toto hucusq; aboleri nō potuit, tū propter *terminos* quosdā, quos pl⁹ propriè placitantes in Gallico, quā in Anglico, exprimūt, tū quia *declarationes super brevia originalia*, tā cōveniēter ad naturā

breviũ illorum pronuntiari nequeũt, ut in Gallica, sub quali sermõe *declarationũ hujusmodi formulæ addiscunt*'. Reportãtur etiã *ea quæ* in curiis regiis *placitant*', *disputant*' *& judicantur*, ac in libros ad futurorũ eruditionẽ redigũtur in sermone sẽper gallico. Quã plurima etiã *statuta* regni illiꝰ in gallico cõscribũtur. Unde accidit qd lingua jã in Francia vulgaris, non concordat aut consimilis est gallico inter Legisperitos Angliæ usitato, sed vulgariter quadam ruditate corrupta. Qd fieri nõ accidit in sermone gallico

of those writs, as in French, And under the same speech the forms of such declarations are learned. Moreover, all pleadings, arguings, and judgements passed in the kings court, and entered into books, for the instruction of them that shall come after, are ever more reported in the French tongue. Many statutes also of that realm are written in French. Whereof it happeth that the common speech, now used in France, agreeth not, nor is not like the French used among the Lawyers of England, but it is by a certain rudeness of the common people corrupt. Which corruption of speech chanceth not in the French

that

that is used in England, forsomuch as the speech is there oftner written then spoken. Now in the third of the said three tongues, which is the Latine tongue, are written all Writs original and judicial: and likewise all the Records of plees in the Kings Courts, with certain Statutes also. Wherfore, while the Laws of England are learned in these three tongues, they cannot conveniently be taught or studied in the universities, where onely the Latine tongue is exercised. Notwithstanding the same Laws are taught and learned, in a certain place of publique or common study, more convenient and apt for attaining to the

infra Angliã usitato, cũ sit sermo ille ibidẽ sæpiꝰ scriptus quã locutꝰ. Sub tertia vero linguarum prædictarũ vz. sub *latina*, omnia *brevia originalia & judicialia*, similiter & omnia *recorda placitorũ* in curiis regũ, etiam & quadam *Statuta* scribuntur. Quare, dum leges Angliæ in his tribꝰ addiscũtur linguis, ipsæ in universitatibꝰ ubi solũ exercetur lingua latina convenienter erudiri non poterũt aut studeri. Leges tamen illæ in quodam studio publico pro illarũ apprehẽsione (omni universitate convenientiore &

pro-

proniore docẽtur & addiſcũtur. *Studium* nãq; *iſtud ſitum eſt prope curiam regis*, ubi leges illæ placitãtur, diſputantur, & judicia per eaſdem reddũtur per judices viros graves, ſenes, in legib⁹ illis peritos & graduatos, quo in curiis illis ad quas omni die placitabili cõfluũt ſtudẽtes in legib⁹ illis, quaſi in ſcholis publicis leges illæ legũtur & docẽtur. Situatur etiã ſtudiũ illud, *int' locum curiarum illarum &* Civitatẽ *London* quæ de õnib⁹ neceſſariis opulẽtiſſima eſt omnũ civitatũ & oppidorũ regni illius. Nec in civitate illa,

knowledg of them thẽ any other univerſity. For this place of ſtudy is ſituate nie to the Kings court, where the ſame laws are pleaded & argued, & judgements by the ſame given by Judg s, men of gravity, ancient in years, perfect and graduate in the ſame laws, Wherefore, every day in court, the ſtudents in thoſe Laws reſort by great numbers into thoſe courts wherein the ſame Laws are read and taught as it were in common ſchools. This place of ſtudy is ſet between the place of the ſaid Courts, and the City of London, which of all things neceſſary is the plentifulleſt of all the Cities and Towns of the Realm. So that the ſaid place of ſtudy is not ſituate

ſituate within the City, where the confluence of people might diſturb the quietneſs of the ſtudents, but ſomewhat ſeveral in the ſuburbs of the ſame City, and nigher to the ſaid Courts, that the ſtudents may daily at their pleaſure have acceſs and recourſe thither without wearineſs.

ubi cõfluẽtium turba, ſtudentiũ quietẽ perturbare poſſit, ſitum eſt ſtudiũ iſtud ſed ſeorſum parumper, in civitatis illiꝰ ſuburbio, & propius Curiis prædictis, ut ad eas ſine fatigationis incõmodo, ſtudẽtes, indies ad libitũ, accedere valeant.

¶ Chap. 49. *Here he declareth the diſpoſition of the general ſtudy of the Laws of England, and that the ſame in number of ſtudents p.ſſeth certain univerſities.*

BUt to the intent, moſt excellent Prince, ye may conceive a form and an image of this ſtudy, as I am able, I will deſcribe it unto you. For there be in it ten leſſer houſes or Innes, & ſometimes moe,

SEd, ut tibi conſtet *princeps* hujꝰ ſtudii forma & imago, illam, ut valeo, jam deſcribã. ſunt namq; in eo, *decem hoſpitia minora*, & quãdoq; vero plura, quæ

quæ nominãtur *hoſpitia Cancellariæ* ad quorũ qdlibet pertinẽt cẽtũ ſtudẽtes ad minus, & ad aliqua eorũ major in multo numer9, licet non oẽs ſẽper in eis ſimul cõveniant. Studẽtes etenim iſti, pro eorũ parte majori, juvenes ſũt, *originalia*, & quaſi legis elementa addiſcẽtes, qui in illis proficiẽtes, ut ipſi matureſcunt, ad *majora hoſpitia* ſtudii illius, quæ *hoſpitia curiæ* appellantur, aſſumũtur, Quorum majorum *quatuor* ſunt in numero, & ad minimum eorum pertinent in forma prænotata, ducenti ſtudẽtes aut prope.

which are called Innes of the Chancery. And to every one of them, belongeth an hundred ſtudents at the leaſt, and to ſome of them a much greater number, though they be not ever all together in the ſame. Thoſe ſtudents for the moſt part of them, are young men, learning or ſtudying the originals, & as it were the elements of the Law, who profiting therein, as they grow to ripeneſs, ſo are they admitted into the greater Innes of the ſame ſtudy, called the Innes of Court, Of the which greater Inns there are four in number. And to the leaſt of them belongeth, in form above mentioned, two hundred Students or there abouts.

For

For in these greater Innes, there can no Student be maintained for lesse expenses by the yeer, then twenty Markes, And if he have a servant to waite upon him, as most of them have, then so much the greater will his charges be. Now, by reason of this charges, the children onely of Noble men do study the Laws in those Innes. For the poor and common sort of the people, are not able to bear so great charges for the exhibition of their Children. And marchant men can seldome find in their hearts to hinder their marchandise with so great yearly expenses.

In hiis enim majoribus hospitiis, nequaquā potest studens aliquis sustētari minoribus expensis in anno, quam octoginta scutorum, & si servientem sibi ipse ibidem habuerit, ut eorum habet plura litas, tāto tunc majores ipse sustinebit expensas. Occasione vero sūptuū hujusmodi, ipsi nobiliū filii tantū in hospitiis illis leges addiscūt. Cū pauperes & vulgares, pro filiorū suorum exhibitione, tantos sumptus nequeant sufferre. Et mercatores raro cupiant tantis oneribus annuis attenuare mercandisas suas.

Quo

Quo fit ut vix doctus in legibus illis reperiatur in regno qui non ſit nobilis, & de nobilium genere egreſs⁹. Unde magis aliis cõſimilis ſtatus hominib⁹, ipſi nobilitatem curant & conſervationẽ honoris & famæ ſuæ. In his revera *hoſpitiis majoribus*, etiam & *minoribus*, ultra ſtudium legũ eſt quaſi gymnaſiũ omnium morũ, qui nobiles decent. Ibi *cantare* ipſi addiſcunt ſimiliter & ſe exercent in omni genere harmoniæ. Ibi etiam *tripudiare*, ac *jocos ſingulos nobilibus convenientes*, qualiter in do-

And thus it falleth out that there is ſcant any man found within the Realm skilfull & cunning in the lawes, except he be a Gentleman born, & come of a Noble ſtock. Wherfore they more then any other kind of men have a ſpeciall regard to their Nobility, and to the preſervation of their honor & fame. And to ſpeak uprightly, there is in theſe greater Innes, yea & in the leſſer too, beſide the ſtudy of the lawes, as it were an univerſity or ſchool of all commendable qualities requiſite for Noblemen. There they learn to ſing, & to exerciſe themſelves in all kinde of harmony. There alſo they practiſe dauncing, & other Noble mens paſtimes, as they uſe

to

to do, which are brought up in the Kings house: On the working dayes, most of them apply themselves to the study of the Law, And on the holy daies to the study of holy Scripture: and out of the time of Divine service, to the reading of Chronicles. For there indeed are vertues studied and vices exiled. So that, for the endowment of vertue, and abandoning of vice, Knights and Barons, with other States and Noble men of the Realm, place their children in those Innes, though they desire not to have them learned in the Laws, nor to live by the practise thereof, but onely upon their fathers allowance.

mo regis exercere solet, enutriti: in ferialibus diebꝰ, eorũ pars major, *legalis disciplinæ*, studio: & in festivalibus *sacræ scripturæ*: & *cronicorum* lectiõi, post divina obsequia, se confert. Ibi quippe disciplina virtutum est & vitiorum omnium exiliũ. Ita ut propter virtutis acquisitionem, vitii etiam fugã, milites, barones, alii quoq; magnates & nobiles Regni, in hospitiis illis ponunt filios suos, quamvis non gliscant eos legũ imbui disciplina nec ejus exercitio vivere, sed solum ex patrociniis suis.

Ibi

Ibi vix unquam ſeditio, jurgium, aut murmur reſonat, & tamen delinquentes nõ alia pœna quam ſolum a communione ſocietatis ſuæ amotione pleƈtũtur, quia pœnam hanc ipſi plus formidant, quam criminoſi alibi carcerem timent, aut vincula, nam ſemel ab una ſocietatum illarum expulſus, nunquã ab aliqua cæterarum ſocietatum earundẽ recipitur in ſocium, quo ibi pax eſt cõtinua, & quaſi amicitia conjũƈtorum, eſt eorum omnium converſatio. Formã vero, qua leges illæ in his diſcũtur

Scant at any time is there heard amongſt them any ſedition, chiding or grudging, And yet the offendours are puniſhed with none other pain, but onely to be amoved from the company of their fellowſhip. Which puniſhment they do more fear, then other criminal offendors do fear impriſonment and irons: For he that is once expelled from any of thoſe fellowſhips is never received to be a fellow in any of the other fellowſhips, And ſo by this means there is continuall peace: and their demeanour is like the behaviour of ſuch as are coupled together in perfect amity. But, after what manner and ſort the laws

laws are learned in thoſe Innes, thereof here to make rehearſall, it is not nædfull, foꝛſomuch as it is not foꝛ your eſtate moſt noble Prince, to put the ſame in ure. Yet know ye this, that it is pleaſant and delectable, and in any wiſe expedient, foꝛ the learning of the Law, and woꝛthy with all affection to be embraced. But one thing there is, that I would have you to know, that neither at Orleance, where aſwell the Canon as the Ciuill laws, are taught, and whither, out of mãy countries, ſcholars do repair, noꝛ at Angeo, oꝛ at Cane, oꝛ any vniuerſity of Fꝛãce (Paris onely excepted) are found ſo many ſtudents paſt childhood, as in this place of ſtudies,

hoſpitiis, hic exprimere non expedit, cum tibi, *princeps*, eã experiri nõ liceat. Scito tamen, qd delectabilis ipſa eſt & omni modo expediẽs legis illiꝰ diſciplinæ, *omni quoque affectione* digna. Unum tamen te ſcire deſidero, qd neque *Aurelianis* ubi tam Canones addiſcuntur, quam ciuiles leges, & quò, a quampluribus regionibꝰ confluunt ſcholares, neq; *Andaginis*, aut in Cadomo, aliaue univerſitate Franciæ prætorquam ſolum *Pariſiis*, reperiuntur tot ſtudentes infantiam evaſi, ſicut in hoc ſtudio,

licet ibi addiſcẽtes omnes, ſolũ ab Anglia ſint oriundi.

notwithſtanding that all the ſtudents there are Engliſh borne.

¶ Chap. 50. *Of the eſtate and degree of a Serjeant at Law, and how he is created.*

SEd cum tu, *princeps*, ſcire deſideres, cur in legib⁹ Angliæ nõ dãtur *Baccalaureat⁹ & Doctoratus grad⁹*, ſicut in utroq; jure in univerſitatib⁹ eſt dari cõſuetum: Scire *te* volo, qd licet gradus hujuſmodi, in legibus Angliæ, minime cõferãtur: datur tamẽ in illis, *nedum grad⁹, ſed & ſtatus quidam, gradu doctoratus non minus celebris aut ſolemnis*, qui *gradus ſervientis ad legẽ* appellatur. Et cõfertur ſub hac, quæ ſubſe-

BUt forſomuch as you deſire to know, moſt gracious Prince, for what cauſe the degrees of Bachelors and Doctors are not given in the Laws of England as they are accuſtomably given in both Laws within univerſities, your Majeſty ſhall underſtand, that, though their degrees are not given in the Laws of England, yet there is given in them not a degree onely, but alſo a ſtate no leſſe worſhipfull and ſolemn, then the degree of doctors: which is called the degree of a ſerjeant at Law. And it is given

given under the manner and form following. The Lord chief Justice of the Common Bench, by the counsel & assent of all the Justices, useth, as oft as he thinketh good, to chuse seven or eight of the discreetest persons, that in the foresaid generall study have most profited in the Laws, and which to the same Justices are thought to be of best disposition, and their names he presenteth to the Lord Chancellour of England in writing, who incontinent, by virtue of the Kings writ, shall charge every of the persons elect to be before the king at a day by him assigned, to take upon him the state & degree of a ser-

quitur, forma. Capital' *Justiciarius* de *communi banco*, de cōsilio & assēsu ōnium Justiciariorum, eligere solet, quoties sibi videtur opportunum, 7 vel 8 de maturioribus personis, qui in prædicto generali studio majus in legibus profecerūt, & qui eisdē justiciariis optimæ dispositionis esse videtur & nomina eorū ille deliberare solet *Cancellario Angliæ* in scriptis, qui illico mādabit per brevia regis, cuilibet electorum illorum, quod sit corā rege, ad diē per ipsum assignatū, ad suscipiendum *statū* & *gradum ser-*

vientis ad legem, ſub ingẽti pœna, in quolibet breviũ prædictorum, limitata: ad quem diem quilibet eorũ cõparẽs, jurabitur (ſuper ſancta Dei evangelia) fore paratũ, ad diẽ & locum tunc ſibi ſtatuendos, ad recipiẽdũ *ſtatũ & gradũ* prædictum, & qd ipſe in die illo dabit *aurum* ſecundũ cõſuetudinẽ regni in hoc caſu uſitatã. Tamen, qualiter ad diem illum, quilibet electorum prædictorũ ſe habebit, nec non formam & modum, qualiter *ſtatus & gradus* hujuſmodi conferentur & recipientur, hic inſerere omitto:

jeant at Law, under a great penalty in every of the ſaid Writs limited: on the which day, every one of them appearing, ſhall be ſworn upon the holy Goſpel of GOD, to be ready, at the day and place then to be appointed, to receive the ſtate and degree aforeſaid, and that he the ſame day ſhall give Gold according to the cuſtome in that behalf uſed. How be it, how and after what ſort, every of the ſaid perſons ſhall that day demean himſelf, and alſo the form and manner, how that ſtate and degree ſhall be given and received, forſomuch as the ſame cannot ſo

to briefly be written, as to the shortnesse of this work is requisite, therefore at this time, I will leave these points untouched. And yet I have declared the same to you ere now by way of talk. But this you must understand, that when the day appointed is come, those elect persons among other solemnities, must keep a great dinner like to the feast of a Kings Coronation, which shall continue and last by the space of seven dayes, And none of those elect persons shall defray the charges growing to him about the coasts of this solemnity, with lesse expences, then the summe of fours hundred marks, so that the expences, which

cum scripturâ majorem illa exigant, quam cõgruit operi tam succincto. Tibi tamen, ore tenus, ea alias explicavi. Scire tamen te cupio, quod advenĩte die sic statuto, electi illi, inter alias solemnitates *Festum* celebrant & *convivium* ad instar *coronationis Regis*, quod & continuabitur per *dies Septem*, nec quisquam electorum illorum, sumptus sibi contingentes circa solemnitatem creationis suæ, minoribus expensis perficiet, quam mille & sexcentorum scutorum, quo, expensæ, quas

octo, sic electi, tunc refundent, excedunt summã 3200 *marcarum* expẽsarũ: pars quæda inter cætera, hæc erit. Quilibet eorum dabit *annulos de auro*, ad valẽciam in toto 40 librarum (ad minus) monetæ Anglicanæ: Et bene recolit Cãcell' ipse, quod dũ ille statũ & grad. hujusmodi receperat, ipse solvit pro annulis, quos tũc distribuit, 50. libras, quæ sunt 300. scuta. Solet nãque unusquisq; *Servientiũ* hujusmodi, tẽporũ creation' suæ dare cuilibet *Principi*, *Duci*, & *Archiep'o*, *in solennitat' illa præsenti*, *ac Cancellario*, & *Thesau-*

eight men, to elect, shall then bestow, will surmount to the sum of three thousand and two hundred Markes. Of the which expences, one parcell shall be this. Every of them shall give rings of gold, to the value of forty pounds sterling at the least: And your Chancellour well remembreth, that at what time he received this state and degree, the rings which he then gave, stood him in fifty pounds. For, every such Serjeant, at the day of his creation, useth to give unto every Prince, Duke, and Archbishop, being present at that solemnity, and to the Lord Chancellour, and Lord Treasurer

ſurer of England, a ring of the value of xxvi. ſhillings viii. pence. And to every Earl and Biſhop being likewiſe preſent, and alſo to the Lord Privy ſeal, to both the Lords chief Juſtices, and to the Lord chiefe Baron of the Kings Exchequer a ring of the value of xx. ſhillings. And to every Lord Baron of the Parliament, and to every Abbot a notable Prelate, a worſhipfull Knight, being then preſent, & alſo to the Maſter of the Rolls, and to every Juſtice, a ring of the value of a Mark, And likewiſe to every Baron of the Exchequer, to the Chamberlains, and to all the officers and notable men ſerving in the Kings courts, rings of a ſmal-

rario Angliæ annulū ad valorē 26.s. 8 d', & cuilibet *Comiti* & *Epiſcopo* cōſimiliter præfatū, necnō *Cuſtodi privat' ſigilli* utriq; *capitali Juſtic'* & *capitali Baroni* de *ſcaccario* regis ānulū ad valorē 20.s. & ōni domino *bar. parliamēti* & ōni *Abbati* & notabili *Prelato*, ac magno *Militi*, *tunc* præſenti, *cuſtodi* etiā *Rotulorū cancellariæ* regis, & cuilibet *Juſtic'* ānulū ad valentiā 1. marcæ, Similiter & omni *Baroni* de *ſcacc'* regis, *camerariis*, etiā omnibus *officiariis* & notabilibus viris in *curiis* regis miniſtrātibus ānulos minoris pre-

tii, cóveniẽtes tamẽ statib⁹ eorũ, quibus donãtur. Ita qd, non erit *clerie⁹* maxime in *curia cõmunis banci*, licet infim⁹, quin annulũ ipse recipiet convenientẽ gradui suo. Et ultra hos ipsi dãt annulos, aliis amicis suis. Similiter & *libratam magnam* panni unius sectæ, quã ipsi tunc distribuent in magna abundantia nedũ familiarib⁹ suis, sed & amicis aliis & notis, qui eis attendent & ministrabũt tẽpore solẽnitatis prædictæ. Quare, licet in universitatibus in gradum doctoratus erecti, expensas non modicas faciant tẽ-

ler price, but agreeable to their estates, to whõ they are given, Insomuch that there shall not be a Clerk, especially in the Court of the Common bench, but he shall receive a ring convenient for his degree. And besides these, they give divers rings to other of their friends. They give also liveries of cloth of one suite or colour in great abundance, not onely to their houshold many, but also to their other friends and acquaintance, which, during the time of the foresaid solemnity, shall attẽd and waite upon them. Wherefore, though in the Universities, they, that are promoted to the degree of Doctors, do sustain no small charges at the time of their commence-

mencement, as in giving of bonners and other rich gifts, yet they give no gold, nor do bestow any other gifts or costs like unto these expenses. Whether in any countrey of the world, is there any speciall degree given in the Lawes of the same Land, but onely in the realm of England. Whether is there any man of Law throughout the universal world, which, by reason of his office or profession, gaineth so much as one of these Serjeants. No man also, be he never so cunning and skilfull in the lawes of the realm, shall be exalted to the office & dignity of a Justice in the court of pleas before the king, or in the court of the common bench, which

pore creationis suæ, ac birreta, alia quoq; donaria quã bona erogent: nõ tamẽ aurũ ipsi conferũt aut alia donaria, sũptusve faciũt, his expẽsis similia. Neq; in regno aliquo *orbis terrarum*, dat' *gradus specialis* in legibus regni illi⁹, præterquã *solum in regno Angliæ*. Nec est advocat⁹ in universo Mundo, qui ratiõe officii sui, tatum lucrat', ut *serviens* hujusmodi. Null⁹ etiã, licet in legib⁹ regni illi⁹ scientissim⁹ fuerit, assumetur ad *officium* & *dignitatẽ justiciarii*, in *curiis placitorũ coram ipso Rege*, & *communis banci* quæ sunt

ſunt ſupremæ curiæ
ejuſdem Regni ordi-
nariæ, niſi ipſe primi-
ſtatu & gradu ſer-
vientis ad legem fu-
erit inſignitus, Nec
quiſquam, præterquã
ſerviens talis in *curia*
communis banci, ubi
omnia realia placita
placitantur, placita-
bit. Quare ad *ſtatum*
& *gradum* talem, nul-
lus hucuſque aſſump-
tus eſt, qui nõ in præ-
dicto generali legis
ſtudio, *ſexdecim an-*
nos ad minus, antea
complevit, & in ſig-
num, quod omnes *ju-*
ſticiarii illi talit' ex-
tãt graduati, quilibet
eorum ſemper utitur
dũ in curia regis ſe-
det, *birreto albo de*
ſerico, quod primũ &

are the chief ordina-
ry Courts of the ſame
realm, unleſs he be
firſt promoted to the
ſtate and degree of a Ser-
jeant at Law. Neither
ſhall any man, but onely
ſuch a Serjant, plead in
the Court of the Com-
mon bench, where all re-
all actions are pleaded.
Wherefore to this ſtate
and degree hath no man
been hitherto admit-
ted, except he hath firſt
continued by the ſpace
of ſixteen years in the
ſaid general ſtudy of
the law, and in token or
ſigne, that all Juſtices
are thus graduat, every
of them always, while
he ſitteth in the Kings
court, weareth a white
Quoife of ſilke: which is
the principal and chief
in-

inſignement of habit, wherewith Serjeants at law in their creation, are decked: and neither the Juſtice, nor yet the Serjeant, ſhall ever put off the quoife, no not in the kings preſence, though he be in talke with his majeſties highneſs. Wherefore moſt noble Prince, you cannot hereafter doubt, but that theſe lawes, which ſo ſingularly above the Civil lawes, yea, and above the laws of all other Realms are honored, and with ſo ſolemn a ſtate of ſuch as are learned therein, & do profeſs the ſame, are worſhipped, muſt needs be precious, noble and high, and of great excellencie, and of ſpeciall knowledge and vertue.

præcipuũ eſt de inſignib⁹ habit', quo *ſervientes* ad legẽ, in eorũ creatione, decorãtur. Nec *birretum* illud *juſticiari⁹* ſicut nec *ſerviens* ad legẽ unquã deponet, quo caput ſuũ in toto diſcoopiet, etiã in *præſentia regis* licet *cum celſitudine* ſua ipſe loquat'. Quare, *Princeps præclariſſime*, tu amodo hæſitare non poteris, quin leges iſtæ quæ tã ſingulariter ſupra civiles leges, leges etiã õnium aliorũ regnorũ honorãt', & tã ſolẽni ſtatu eruditorũ & miniſtrãtiũ in eis vẽerãtur, *precioſæ* ſint, *nobiles* & *ſublimes*, ac magnæ *præſtantiæ*, maximæq; *ſcientiæ* & *virtutis*.

¶ Chap.

¶ Chap. 51. *After what manner a Juſtice is created, and of his habit and converſation.*

SEd ut *Juſticiariorum* (ſicut & *ſervientũ ad legem*) ſtatꝰ *Tibi* innoteſcat, eorum *formam officiumque* (ut potero) jam deſcribã. Solent nãque in *cõmuni Banco quinque Juſticiarii* eſſe, vel *ſex* ad majꝰ: Et in *Bãco Regis quatuor* ad *quinque*, ac quoties eorũ aliquis per mortẽ vel aliter, ceſſaverit, Rex, dꝰ adviſamẽto conſilii ſui, eligere ſolet unũ *de ſervientibus ad legem* & eum per *literas* ſuas *patentes* conſtituere in *Juſticiarium*, loco judicis ſic ceſſantis, & tunc Cancel-

BUt to the intent the ſtate of Juſtices as well as the Serjeants at Law, may be known to your grace, as I can, I will deſcribe unto you their form and office. In the common bench there are cuſtomable v. Juſtices or ſix at the moſt. And in the Kings bench iiii. or five. And as oft as the place of any of them by death or otherwiſe, is void, the King uſeth to chooſe one of the Serjeants at Law, and him by his Letters Patents to ordain a Juſtice, in the place of the Judge ſo ceaſing, And then the Lord Chancellour of England

land shall enter into the Court, where the Justice is so lacking, bringing with him those letters patents, a sitting in the middest of the Justices causeth the Serjeant so elect to be brought in, to whom in the open Court he notifieth the Kings pleasure touching the Office of the Justice then void and causeth the forsaid letters to be openly read. Which done, the Master of the Rolls shall read before the same elect person, the oath that he shall take, which when he hath sworn upon the holy Gospel of God, the Lord Chancellour shall deliver unto him the Kings letters aforesaid, And the Lord Chief Justice of the Court shall assign unto him a

lari⁹ Angliæ adibit *curiam*, ubi *justic'* sic deest, deferēs secum literas illas, ac sedēs in medio justic' introduci facit servientem sic electū, cui in plena curia, ipse notificabit voluntatem regis, de officio judiciario sic vacāte, & legi faciet in publico literas prædictas: Quo facto, *custos rotulorū cancellariæ regis* leget corā eodē electo, *jusjurandum* quod ipse facturus est, qd & cum super *sancta Dei Evange-* ipse juraverit, *Cancellarius* sibi tradet literas regis prædictas, & capitalis justiciarius curiæ illius assignabit sibi locum

locū in eadē, ubi deinceps ille ſedebit, & mox eū ſedere faciet in eodē. Sciēdū tamē *tibi* eſt, *Princeps*, quod *Juſticiarius* iſte inter cætera tūc jurabit: *ſe juſtitiā miniſtraturū indifferenter omnibus hominib⁹*, corā eo placitātib⁹, inimicis & amicis, nec ſic facere differet, etiamſi rex per literas ſuas, aut ore tenus contrariū jūſſerit. Jurabit etiā qd extunc non recipiet ipſe ab aliquo præterquam a *rege*, *feodum*, aut *penſionem* aliquā, ſeu *liberatam*, neq; donū capiet ab habente placitū coram eo, præterquam eſculenta & poculenta

place in the ſame, where he ſhall then place him, & that place ſhall he afterward keep. Yet you muſt know, moſt noble Prince, that this Juſtice ſhall then amōg other things, ſwear, that he ſhall indifferently miniſter Juſtice to all men, as well foes as friends, that ſhall have any ſuite or plea before him. And this ſhall he not forbear to do though the king by his letters, or by expreſſe word of mouth, would command the contrary. He ſhall alſo ſwear that from that time forward, he ſhall not receive or take any fee or pēſiō, or livery of any man but of the King only, nor any gift, reward or bribe of any man having ſuite or Plea before him, ſaving meat and drink

drink, which shall be of no great value. You shall also know, that a Justice, thus made, shall not be at the charges of any dinner or solemnity, or any other costs at that time when he taketh upon him his Office and dignity. For so much as this is no degree in the faculty of the Law, but an office onely and a room of authority, to continue during the kings pleasure. Notwithstanding the habit of his raiment, he shall from time to time forward, in some points change, but not all the ensignements thereof.

For being a Serjeant at Law, he was cloathed in a long robe priest like, with a Furred Cape about his shoulders, and thereupon a Hood with

lēta, quæ nō magni erūt precii. Sciēdū etiā tibi est quod *Iusticiar'* sic creat⁹, cōviviū, solēnitatēve, aut sūptus aliquos, nō faciet tempore susceptionis officii & dignitatis suæ, cū non sint illa *gradus* aliqui in *facultate legis*, sed *Officium* suū illa sint & *magistratus*, ad regis nutum duratura, *habitum* tamen *indumenti* sui (in quibusdā) ipse extunc mutabit, sed non in omnibus insigniis ejus. Nā *serviens ad legem* ipse existens *roba longa* ad instar sacerdotis, *cum capicio penulato* circa hūeros ej⁹ & desuper *collobio*, cum duo-

duob⁹ *labellulis*, qualiter uti ſolẽt doctores legũ in univerſitatib⁹ quibuſdã, cũ ſupra deſcripto *lerreto* veſtiebatur. Sed *Juſtic'* fact⁹, loco collobii, *chlamide* induetur, *firmata ſuper humerũ ej⁹ dexterum*, cæteris ornamentis ſerviẽtis adhuc permanentibus, excepto quod *ſtragulata veſte*, aut *coloris bipertiti*, ut poteſt *ſerviens*, *Juſticiarius* non utetur, & *capicium* ejus non alio quam *menevers* penulatur, *Capicium* tamen *ſervientis pellibus agninis* ſemper *albis* implicatur, qualem *habitum* re plus ornare optarẽ,

two Labels, ſuch as Doctours of the Laws uſe to wear in certain Univerſities, with the above deſcribed Coyfe. But being once made a Juſtice inſtead of his Hood, he ſhall wear a Cloak cloſed upon his right ſhoulder, all the other Ornaments of a Serjeant ſtill remaining: ſaving that a Juſtice ſhall wear no party-coloured Veſture as a Serjeant may. And his Cape is Furr'd with none other then Menever, whereas the Serjeants Cape is ever Furr'd with white Lambe. And this Habit I would wiſh your Grace to bring into high eſtimation,

when

when it shall be in your power, for the worship of the state of the Law, & the honour of your Realm. Furthermore, I would ye should know, that the Justices of England sit not in the kings courts above iii. hours in a day, that is to say, from viii. of the clock in the forenoone till xi. compleat, For in the afternoones, those courts are not holde or kept. But the Saters then resort to the perusing of their writings, & elsewhere consulting with the Serjeants at law, and other their Coūcellours. Wherefore the Justices, after they have taken their refection, do pass & bestow all the residue of the day in the study of the laws, in reading of holy Scripture, and using

cū potestas tibi fuerit, ad decorē status legis & honorē regni tui. Scire *te* etiam cupio, quod justiciarii Angliæ nō sedēt in curiis regis, nisi *per tres horas in die s. ab hora viii. ante meridiem, usque horam xi. completam*, quia *post meridiem curiæ illæ non tenentur*. Sed *placitantes* tunc se divertunt *ad pervisum*, & alibi, consulentes cum serviētibus ad legem & aliis consiliariis suis. Quare *Justiciarii*, postquam se refecerint, totum diei residuum pertrāseunt, studendo in *legibus*, *sacram* legēdo *scripturam*, & aliter ad

eorū libitū *contemplando*, ut vita iplorū plꝰ contẽplativa videatur quã activa. Sicq; quietã illi vitã agunt ab omni ſolicitudine & mundi turbinibus ſemotã: nec unquã cõpertū eſt eorum aliquem, donis aut muneribꝰ ſuiſſe corruptū. Unde & hoc genꝰ gratiæ vidimꝰ ſubſecutæ, quod *vix eorum aliquis ſine exitu decedat*, quod juſtis magnæ & quaſi appropriatæ benedictionis Dei eſt, mihi quoq; non minimi muneris divini cenſetur eſſe penſandū, quod *ex judicum ſobole, plures de proceribus & magnatibus*

other kind of contemplation at their pleaſure, ſo that their life may ſeem more contemplative then active. And thus do they lead a quiet life diſcharged of all worldly cares and troubles: And it hath never been known, that any of them hath been corrupt with gifts or bribes. Whereupon we have ſeen this kind of grace following, that skant any of them dieth without iſſue, which unto juſt men is a token of the great and peculiar bleſſing of God. And in mine opinion it is to be judged for no ſmall point of the bountifull goodneſs of God, that out of the generation of Judges there have hitherto ſprung up moe States and Peers

of

of the Realm, then out of any other ſtate of men: which by their own wit & policy have aſpired unto great wealth, nobility & honour. Yea, though the ſtate of Merchants ſurmount the number of Judges by many thouſands, being men of ſuch ſingular wealth, that among them commonly there be ſuch, as one of them in riches paſſeth all the Juſtices of the Realm. For this cānot be aſcribed unto fortune, which is nothing. But it is to be attributed (as I take it) only to the bleſſing of God. For ſo much as by his Prophet he ſaith, that the generatiō of righteous men ſhall be bleſſed. And the Prophet in a nother place, ſpeking of juſt men, ſaith,

regni hucuſque prodierunt, quam de aliquo alio ſtatu hominum regni, qui ſe prudentia & induſtria propria opulentos, inclitos, nobileſque fecerunt. Quanquam *mercatorum ſtatus*, quorū aliqui ſunt qui omnib⁹ *juſticiariis*, regni præſtāt divitiis, judicū numerū in nullibus hominum excedat. Nā fortunæ, quæ nihil eſt, iſtud aſcribi nō poterit: ſed divinæ ſolū benedictioni fore arbitror tribuēdum. Cum ipſe per *prophetam* dicat: quod *generatio rectorum benedicetur*. Et alibi de juſtis loquens *propheta* ait:

quod *filii eorum in benedictione erunt. Dilige* igitur, *(filii Regis) justiciam*, quæ sic ditat, colit, & perpetuat fœtus colentium eam. Et *zelator esto legis*, quæ justitiam parit, ut *à te* dicatur, quod *à justis* scribitur, *& semen eorum in æternum manebit.*

that their children shall be in blessing. Wherefore, O most magnificēt Prince, be you in love with Justice, which thus enricheth, exalteth to honor & addāceth to perpetuity the children of them that have her in veneratiō. And be you a zelous lover of the Law, the very weighing of justice, that by you it may be said what is written of the righteous, And their seed shall remain for ever.

¶ Chap. 52. *The Prince findeth fault with delayes, that are made in the Kings Courts.*

Princeps. Unū a. solū supest, Cācellarie, declarādum quo parūper adhuc fluctuat, inquietatur quoq; mens mea, in quo, si eā solidaveris, nō āpliꝰ te quæstionibus fatigabo.

There remaineth now but one thing, good Chancellour, quoth the Prince, to be declared, wherewith my mind sōwhat yet wavereth and is disquieted, wherein if you stay and satisfie me, I will trouble you with no mo

mo queſtiõs. The Laws of England as the repoꝛt goeth, ſuffer great delays in their pꝛoceſſes, moꝛe then the Laws of other ſtations, which unto ſuters is not onely a hinderance of their right, but alſo many times an impoꝛtable burden of charges, and chiefly in thoſe actions, wherein dammages are not allowed.

Dilationes ingẽtes, ut aſſeritur, patiuntur leges Angliæ in proceſſib⁹ ſuis pluſquam leges aliarum nationum, qd petẽtib⁹, nedũ juris ſui prolatio eſt, ſed & ſumptuũ quãdoque impoꝛtabile on⁹, & maxime in actionibus illis in quibus damna petentibus non redduntur.

¶ Chap. 53. *Delayes, that happen in the Kings Courts are neceſſary and reaſonable.*

IN actions perſonall, quoth the Chancellour, out of Cities and Townes of merchandiſe, where the manner of pꝛoceeding is according to the cuſtomes and liberties of the ſame, there the pꝛoceedings are oꝛdinary. And though they ſuffer great

CAncellarius: In *actionibus perſonalibus* extra *urbes* & *villas* mercatorias, ubi proceditur *ſecundum conſuetudines & libertates earundem*, proceſſus ſunt ordinarii. Et quantaſlibet dilati-

ones patiuntur, non tamen *exceſſivas*. In urbibus verò & villis illis, potiſſimũ cũ urgens cauſa depoſcat, celeris, ut in aliis mũdi partibus fit proceſſus, nec tamẽ (ut alibi) ipſi nimiũ aliquãdo feſtinantur, quo ſubſequitur partis læſio. Rurſus in *realib⁹ actionib⁹* in omnib⁹ fere mundi partib⁹, moroſi ſunt proceſſus, ſed in Anglia, quodãmodo *celeriores*. Sunt quippe in regno *Franc'* in curia ibidem ſuprema quæ *curia Parliamenti* vocitat' proceſſ⁹ quidã, qui in ea pl⁹ quã *triginta* annis pepẽderunt. Et novi ego appellati-

delays, yet they be not exceſſive. But in the ſame Cities and Towns chiefly when any urgent cauſe ſo requireth, there is quick diſpatch made like as in other parts of the world, and yet not with ſuch hot haſte as in ſome other places, that the party be thereby endammaged. Again, in actions reall, the proceedings are very ſlow, almoſt in all parts of the world, but in England, ſomewhat ſpeedier. For, within the realm of France, in the higheſt Court there, which is called the Court of Parliament, there be certain proceſſes that have hanged there above thirty yeers. And I know that a cauſe of appeal, which

in

in the court betweē Rich. Heron an English merchāt, & other merchāt men for a transgression made, hath bin debated within the jurisdiction of that court, hath already hāged by the space of 5. years, & it is not yet like, that it cā be decided within other 5. years: While I was lately abiding in Paris, mine Hoste shewed me his processe in writing, which in the court of Parliament there he had then followed full 8. years, for 4 s. rent, which in our mony maketh not above 8 d. and yet he was in no hope to obtain judgement in 8. years more: and I know other cases there like unto these. So that the Laws of Englād, as semeth to me, cause not so great delays,

onis causā unā, quæ in curia illa agitata fuit, jā per decē annos suspēsa fuisse & adhuc verisimile non est, eā infra annos x. alios posse decidi. Ostendit & mihi dudū, dū *Parisiis* morabar, hospes meus processum suum in scriptis, qui in curia parliamēti ibidē ipse tūc 8. an. pro 4 s. reddit⁹, qui de pecunia nostra 8 d. nō excedūt prosecut⁹ est, nec speravit se in 8. ann. aliis judicium inde obtēturum. Alios quoq; nōnullos novi casus ibidē, his similes, sic qd. leges *Angliæ non tantas*, ut mihi visum est, *dilationes fortiuntur ut*

faciunt leges regionis illi?. Sed revera perneceſſariũeſt, *dilationes* fieri in proceſſib? õniũ actionũ, dũmodo nimiũ ipſæ non fuerint exceſſivæ. Nam ſub illis *partes*, & maxime *pars rea*, quã ſæpe ſibi providẽt de defenſionib? utilibus, ſimiliter & conſiliis, quib? alias ipſi carerẽt. Nec unquã in judiciis tãtũ imminet periculum, *quantum parit proceſſus feſtinatus*. Vidi nẽpe quondã apud civitatẽ *Sarum*, cora *judice* quodam ad gaolã ibidẽ deliberandã, cum clerico ſuo aſſignato, mulierem de morte mariti ſui *infra annum*

as do the Laws of that countrey. But to ſpeak uprightly, it is neceſſary that delaies be had in the proceſſes of all nations, ſo that the ſame be not too much exceſſive. For by reaſon thereof, the parties, and chiefly the party defendãt, do oftentimes provide themſelves of good defences, and alſo of counſels, wch elſe they ſhould lack. And in judgements, there is never ſo great danger toward, as when proceſſe goeth forward with over much haſte. For I ſaw once in the City of Silisbury, before a certain Judge, at a gaole delibery there, with the Clerk of the aſſiſes, a woman attainted and burned for the death of her husband within a yeat after

after he was slain, In the which case, it was in the Judges power to have reprived or respected the womãs araignment till the end of the year. And about a year after that, I saw one of the servants of the slain man convict, before the same Justice, of the death of the same his master. Who then openly confessed, that he himself alone slew his master; & that his master his wife, which before was burned, was altogether innocent of his death. And he for the same was drawn and hanged. And still even at the point of death he lamented the woman burned, as one clear from that offence.

ad interfectiõe ejꝰ *attinctam similiter & combustam*, in quo casu licuit judici illi, usq; post ānū illū arretamētū sive dilationē mulieris illius respectuasse, & post ānū illū, vidi unū de serviētibꝰ interfecti illiꝰ corā eodē justiciario, d'morte ejusdē magistri sui cõvictū, qui tuc publice fatebat', ipsūmet solū magistrū suū occidisse, & magistrā suā, uxorē ejꝰ, tūc cõbustā, innocētē omino fuisse de morte ejꝰ: quare ipse *tractꝰ & suspensꝰ* fuit. Sed tamē ōnino, etiā in ipso mortis articulo, mulierē cõbustā imunē à crimine illo fuisse, ipse lugebat.

O quale putādū eſt ex hoc facto cōſciētiæ diſcrimē & remorſū eveīſſe juſticiario illi tā præcipiti, qui potuit proceſſū illū juſte retardaſſe? Sæpiꝰ proh dolor ipſe mihi faſſꝰ eſt, qd nūquā in vita ſua animū ejꝰ de hoc facto ipſe purgaret: *crebro* etēim *in deliberatiōibꝰ, judicia maturescūt*: Sed *in accelerato proceſſu, nuqua*. Quare *leges Angliæ eſſoiū admittūt*, qualia nō faciūt leges aliæ mūdi ūiverſi. Nōne quā utiles ſūt *vocatiōes ad warrātū? Auxilia de* his ad quos ſpectat *reverſio teēmētorū*, qui in placitū deducunt, & qui habēt eviden-

O what perplexity & remorſe of conſcience it is to be thought, that this ſo haſty a Juſtice had of this deed, which might juſtly have ſtaied the proceſſe? He himſelf (alas) often confeſſed unto me that he ſhould never during his life be able to clear his conſcience of this fact: For many times, in deliberations, judgements grow to ripeneſs: but in overhaſty proceſs, never. Wherefore the Laws of England admit eſſoyns, and ſo do no other laws of all the world. Are not vouchings to warrant right profitable? are not the aides of them profitable to whom the reverſion of tenements brought in plea belongeth, and which have the

evidences of the same? Are not also the aides of copartmers profitable, which shall pay according to the rate of a tenement, allotted to their copartner by force of the Law evicted from him? And yet all these are delays, as you, most noble Prince, by my talk at other times do well know: and the like delays to these do no other Laws admit, neither do the Laws of England admit trifeling and unfruitfull delays. And if any such fond delays should be used, they may at every Parliament be cut away. Yea, and other Laws used in the same Realm, when in any point they begin to halt, they may at every

tias eorundē? *Auxilia* etiā *de coparticipibus* qui reddent pro rata, si tenemētū coparticipi allocatum evincatur? & tamen hæc *dilationes* sunt, sicut, *tu Princeps*, alias nosti ex doctrina mea: & dilatiōes his similes, leges aliæ nō admittūt, neq; leges Angliæ frivolas, & infructuosas permittunt inducias. Et si quæ in regno illo dilationes in placitis, minus accōmodæ, fuerint usitatæ, in omni parliamento amputari illæ possunt: etiam & omnes leges aliæ, in regno illo usitatæ, cum in aliquo claudicaverint, in

omni

omni Parliamento poterunt reformari. Quo recte cõcludi poteſt, quod *omnes leges regni illius optimæ ſunt, in actu vel potentia*, quo faciliter in actũ duci poterunt & in aſſentiam realẽ. Ad quod faciendum, quoties æquitas id poposcerit, ſinguli regẽs ibidem, ſacramento aſtringuntur ſolemniter præſtito tempore receptionis diadematis ſui.

Parliament be reformed. Wherefore, it may well be concluded, that all the Laws of that Realm are right good, either in deed, or in poſſibility. So that if they be not preſently good, they may eaſily be reduced to the preſent perfection of goodneſs. To the performance whereof, as oft as equity ſo requireth, every king there is bound by an oath ſolemnly taken at the time of his Coronation.

¶ Chap. 8. *The Laws of England are right good, the knowledge whereof is expedient for kings. Yet it ſhall ſuffice them to have but a ſuperficial knowledge of the ſame.*

Princeps. Leges illas, nedum bonas ſed & optimas

I Have well & evidently perceived, quoth ỳ prince, by the proces of your talk, good

good Chancellour, that those Laws are not onely good but also of most perfect & excellent goodness. And if any of them have need to be amended, that may quickly be done, as the forms & orders of the parliaments there do plainly prove. Wherefore the realm is ever really, or potentially governed by most excellent and most worthy Laws, and I doubt not, but that your instructions, in this our talk, shall be profitable for the kings of England, which hereafter shall be: so that they have no pleasure in governing by unpleasant laws. For the unhandsomeness of the tool or instrument wearies the workman: & a blunt pike or a dull sword maketh a cowardly souldier.

esse cancellarie, ex prosecutione tua in hoc dialogo certissime deprehendi. Et si quæ ex eis meliorari deposcat, id citissime fieri posse, parliamentorum ibidem formulæ nos erudiunt. Quo, realiter, potentialiterve, regnum illud semper præsantissimis legibus gubernatur, nec tuas in hac concionatione doctrinas, futuris Angliæ regib⁹, inutilis fore cōjicio, dum non delectent regere legibus, quæ non delectant. *Fastidit* namq; *artificem, ineptia instrumenti: & militē ignavum reddit, debilitas lanciæ & mucronis.*

Sed

Sed ſicut ad pugnã animatur miles, cum, nedũ ſibi prona ſint arma ſed & magis, cum in actib⁹ bellicis ipſe ſit expertus, dicẽte Vegetio de re militari qd, *ſcientia rei bellicæ, dijudicãdi audaciã nutrit.* (Quia nẽo facer metuit qd ſe bene didiciſſe cõfidit) S.c & Rex õnis, ad juſtitiã animatur, dũ leges, quibus ipſa fiet, nedum juſtiſſimas eſſe agnoſcit, ſed & earum ille expert⁹ ſit formam & naturam: quas tantum in univerſali, incluſive & in confuſo *Princip*i ſcire ſufficiet, remanente ſuis *judicibus*, earum diſcreta de-

But like as a ſouldier is encoꝛaged to fight, not only when he hath handſome & fit weapõs in a redineſs, but alſo much moꝛe, when he is expert & skilfull in warlike acts, accoꝛding to the ſaying of Vegetius in his book of Chivalry, that knowledge & cunning in Martial feats miniſtreth boldneſs in fighting (foꝛ no mã feareth to do that wch he truſteth he hath well learned) in like manner every King hath a ferꝛent zeal, and earneſt deſire to the maintenance of Juſtice, not only knowing thꝛ Lawꝛ, whereby that muſt be done, to be moſt juſt, but alſo being skilfull in the foꝛm and nature of the ſame: Whereof it ſhall ſuffice the Prince to have only an univerſal, a ſuper-

ficial

ficiall & a confuse knowledge, the discreet & determinate perfectnes, & deep understading of the same, being left to his Judges. So also, ought all princes to be well seen in the holy scriptures of God, as saith Vincentius Beluacensis in his book of the Moral institution of Princes, For asmuch as the Scripture above mẽtioned saith, that vain are all they, in whom is not the knowledge of God, and for that in the sixteenth Chapter of the proverbs it is thus written: Let Prophesie, or the Word of God, be in the lips of the King, & then his mouth shall not go wrong in judgement. And yet is not a King bound to have profound knowledge and determinate understan-

terminataque peritia & scientia altiori. Sic equidẽ & *scripturarum divinarum peritiam*, ut dicit *Vincentius Beluacensis* in libro de *Morali institutione Principum*, Omnis princeps habere deberet, cum dicat scriptura superius memorata, quod *vani sunt omnes, in quibus non est scientia dei*, & *Prover.* xvi. scribatur: *Divinatio*, id est, divina sententia, vel, sermo divinus, *sit in labiis regis*: & tunc *in judicio non errabit os ejus*. Non tamẽ profũde, & determinative intelligere tenetur *Princeps* scripturas

turas sacras, ut decet *sacræ Theologiæ professorem*: sufficit namque ei, earum in confuso degustare sentẽtias, qualiter & peritiã legis suæ. Sic & fecerunt *Carolus Magn⁹, Lodevic⁹* filiꝰ ejus, & *Robertus* quondã rex *Frãciæ*, qui hãc scripsit sequẽtiã (*Sancti spiritꝰ adsit nobis gratia*,) & quã plures alii, ut in xv. c. lib. prædicti *Vincentius* prædictus luculenter docet. Unde & doctores legum dicũt: qd *Imperator gerit omnia jura sua in scrinio pectoris sui*, non quia õnia jura ipse noscit realit'& in actu sed dum principia

ding in the holy Scriptures as it becometh a professour of Divinity: For it shall be enough for him superficially to taste the sentences thereof, as also of his Laws. Thus did Charles the great, Lewes his sonne and Robert sometimes King of France who wrote this sequence (Sancti Spiritus adsit nobis gratia) and divers other Princes, as the foresaid Vincentius in the fifteenth Chapter of his Book aforesaid plainly sheweth. Wherefore the Doctors of the Laws do say, that an Emperour beareth all his Laws in the box of his breast: not for that he knoweth all the Laws really and indeed, but for that he understand-

standeth the principles of them, likewise their forme and their nature, in which respect he is judged to be skilful in all his Lawes, which also he may alter, change, and repeale: So that in him are potentially all his lawes, as Eve was in Adam before she was made. But now, good Chancellour, seeing I perceive my self sufficiently perswaded to the studie of the lawes of England, which thing in the beginning of this worke you promised to performe, I will no longer trouble you in this behalf, But thus I instantly desire you that ye will instruct me in the principles of the Law, as you once began to do: and that you will teach

eorũ ipse præcepit, formam similiter & naturam, omnia jura sua ipse intelligere censetur, quæ etiam formare ille potest, mutare & cessare: quò in eo potẽtialiter sunt omnia jura sua, *ut in Adam erat Eva, antequam pasmaretur*. Sed quia Cancellarie, ad legum Angliæ disciplinatum mihi jam conspicio sufficienter esse suasum, quod & in hujus operis exordio facere promisisti: Non te amplius hujus prætextu, solicitare conabor, sed obnixè deposco, ut *in legis hujus principiis*, ut quõdã incepisti, me erudias:

dias: docēs quodā-modo ejus agnoſcere formam & naturam, quia *lex iſta* mihi ſēper peculiaris erit *inter cæteras leges orbis*, inter quas ipſam lucere conſpicio, ut *lucifer inter ſtellas*. Et dum intentioni tuæ qua ad collationem hanc concitatus es, jam ſatisfactum eſſe non ambigo, tempus poſtulat & ratio, ut noſtris colloquiis terminum conferamus: reddentes ex eis, laudes ei & gratias, qui ea incepit, proſecutus eſt, & finivit, *Alpha* & *O*. quem dicimus, quem & laudet omnis ſpiratus. Amen.

me to know and underſtand the foꝛme and nature thereof, Foꝛ this Law ſhall be ebermoꝛe peculiar to me among all other Laws of the world, among the which I ſee it ſhine, as Lucifer among the Starrs. And foꝛſomuch as I doubt not but your intent, whereby you were moved to this conference, is fully ſatisfied: both time and reaſon requireth, that we make an end of our talke, yielding thereforе laudꝭ and thanks to him, which began, furthered, and hath finiſhed the ſame, Whom we call Alpha and O. who alſo be praiſed of every living creature. Amen.

FINIS.

The Table.

AN Introduction to the matter. Fol. 3
The Chancellour moveth the Prince to the knowledge of the Law. 4
The Princes reply to the motion. 7
The Chancellour fortifieth his assertion. 8
The Chancellour proveth that a Prince by the Law may be made happy and blessed. 10
Ignorance of the Law causeth contempt thereof. 14
The Chancellour briefly repeateth the effect of his perswasion. 17
The Prince yieldeth himself to the study of the Laws, though he be yet disquieted with certain doubts. 19
So much knowledge as is necessary for a Prince is soon had. 20
A King whose government is politique cannot change his Laws. 25
The Prince demandeth a question. 27
The answer is omitted, for that in an other work it is handled at large. 28

How kingdoms ruled by royal government onely first began. 28

How kingdoms of politique governance were begun. 30

The Prince compendiously abridgeth all that the Chancellour before hath discoursed at large. 33

All Laws are the Law of Nature, Customes, or Statutes. 36

The Law of Nature in all Countries is one. 37

The Customes of England are of most ancient antiquity, practised and received of five several Nations from one to another by succession. 38

With what gravity Statutes are made in England. 39

A mean to know the diversity between the Civil Laws and the Laws of England. 41

The first case wherein the Civil Laws and the Laws of England differ. 42

Inconveniences that cometh of that Law, which no otherwise then by witnesses admitteth trialls. 43

Of the crueltie of Racking. 46

The Civil Law oft faileth in doing of Justice. 50

How Counties are divided and Sheriffs chosen. 51

How Jurers must be chosen and sworn. 54
How Jurers ought to be informed by evidences and witnesses. 57
How causes criminal are determined in England. 61
The Prince granteth the Laws of England to be more commodious for the subjects, then the Civil Laws in the case disputed. 63
Why Enquests are not made by Juries of xij men in other Realms, as well as in England. 65
The Prince commendeth the Laws of England for their proceeding by Juries. 69
The Prince doubteth, whether this proceeding by Juries be repugnant to Gods Law, or not. 70
That the proceeding by a Jury is not repugnant to the Law of God.
Why certain Kings of England have had no delight in their own Laws. 76
The Chancellour openeth the cause which the Prince demandeth. 77
The inconveniences that happen in the Realm of France, through regal government alone. 79
The commodities that proceede of the joynt government politique and regal, in the Realm of England. 83
A comparison of the worthines of both the regiments. 86

The Prince breaketh the Chancellour of his tale. 89

The ſecond caſe, wherein the Civil Laws, and the Laws of England, diſagree in their judgments. 89

Special cauſes why baſe born children are not legitimate in England by matrimonie enſuing. 93

The Prince alloweth the Law, which doth not legitimate children born before matrimonie. 98

The third caſe wherein the Laws aforeſaid diſagree. 98

The Prince approveth the Law, whereby the iſſue followeth not the womb. 103

The fourth caſe wherein the ſaid Laws varie. 104

The Prince commendeth the education of Noble mens children being Orphans. 106

Other caſes wherein the aforeſaid Laws differ. 108

The Prince regardeth not the caſes laſt rehearſed. 109

The Chancellour ſheweth why the Laws of England are not taught in the Univerſities. 110

The diſpoſition of the generall ſtudie of the Laws of England, and that the ſame in number paſſeth certain Univerſities. 113

Of

Of the eſtate and degree of a Serjeant at Law, and how he is created. 116

After what manner a Juſtice is created, and of his habit and converſation. 121

The Prince findeth fault with delays that are made in the Kings Courts. 125

That delays which happen in the Kings Court are neceſſary and reaſonable. 129

That the Laws of England are right good, the knowledge whereof is expedient for Kings, and that it ſhall ſuffice them to have but a ſuperficial knowledge of the ſame. 129

FINIS.

Notes upon Sir *John Forteſcue* Knight, Lord Chief Juſtice of *England*.

De laudibus legum Angliæ.

Ad CAP. III.

1. *Autore cauſarum.*] Queſtionleſs he meant the author of the little book *De cauſis*, put in ſome latine editions at the end of *Ariſtotle's* works with ſome other ridiculouſly attributed to *Ariſtotle*. There are, who think it to be done by *Alpharabius*, others by *Avempace*, others by *Proclus*. It was turn'd out of Hebrew into Latine, but is not extant in *Ariſtotles* language. It's ancient, but clearly beneath the age of *Ariſtotle*. In *propoſit.* 1. The ſubſtance is of what he cites.

Ad

Ad CAP. VIII.

2. APprenticios,] From *Apprendre*, i. *to learn*, comes *Apprentice de la ley*; which will denote as much as *Discipulus*, applied by *Justinian* to somewhat a like degree in his law. For after he had reckon'd his *Dupondii* or *Justiniani novi* (that is, students of two years standing) his *Papinianists* (students of three years) his *Lytæ* (those of four years) and his *prolytæ* (for them of five) to whom the reading of the whole course of that law and an able understanding was imputed; he then, comprehending the *prolytæ*, and the rest labouring to that degree, addes; *Discipuli igitur omnibus eis legitimis arcanis reseratis, nihil habuant absconditum*, but that they might afterward be *Justitiæ satellites & judiciorum optimi tam athletæ quam gubernatores, in omni loco avoque felices.* So he writes *C. tit. de veteri jure enucl. l.* 1. *Deo auctore. Sect.* 6. The ancientest mention of an *Apprentice* in this sence which our publisht books have, is in 1 *Ed.* 3. *fol.* 17. *a. pl.* 3. But in the monuments of Parliament of 20 *Ed.* 1. extant in the Tower, this testimony is of them: *De Atturnatis & Apprenticiis, D. Rex injunxit* Johanni *de* Mettingham *& sociis suis, quod ipsi per eorum discretiones provideant & ordi-*

dipent certum numerum de qualibet comitatu de melioribus & legalioribus & libentius addiſcentibus, ſecundum quod intellexerint quod Curiæ ſuæ & populo de regno melius valere poterit & majus commodum fuerit, & quod ipſi quos ad hoc elegerint Curiam ſequantur, & alii non. Et videtur Regi & ejus conſilio quod ſepties-viginti ſufficere poterint, &c. Apponant tamen præfati Juſticiarii plures ſi viderint eſſe faciendum vel numerum anticipent, & de aliis remanentibus fiat ſecundum diſcretionem Juſticiariorum. Mention is of them alſo in *Fleta lib.* 2. *cap.* 37. Part of that of 20 *Ed.* 1. is tranſcrib'd in the Epiſtle of the 9. reports, where more is out of antiquity touching theſe Apprentices. The name was uſed for Practiſers, and *Apprenticii ad Barros*, are Barriſters in the ridiculous verſes of *Andrew Horn*, before his *Mirrour aux Juſtices*: Theſe are they,

Hanc legum ſummam, ſi quis vult mira tueri,
Perlegat, & ſapiens ſi vult orator haberi;
Hoc Apprenticiis *ad* Barros *ebore munus,*
Gratum juridicis utile mittit opus
Horn *mihi cognomen*, Andreas *eſt mihi nomen.*

This *Horn* lived about *Ed.* 2. His certain age I yet know not. The verſes I tranſcrib'd out of an ancient copy of him, extant in *Bennet* Col-

Colledge Library in *Cambridge*, and written, as it ſeems by the hand, about *Edw.* 3. or *Rich.* the ſeconds time.

3. *Proprio ore nullus Regum Angliæ.*] Yet certainly the Kings themſelves often ſat in Court (in the Kings Bench) and in the rolls of Charters under King *John* and the time near him, often occur grants that ſuch or ſuch Engliſh ſhould not be impleaded or put to anſwer *niſi coram nobis vel capitali juſtitia noſtra*, and to *Normans*, *niſi coram nobis vel capitali ſeneſcallo noſtro.* For example, in *Rot. Chart.* 1. *Reg. Joh. Chart.* 171. *memb.* 28. the King gives to one *Jacob* a Jew of *London* and a Prieſt of the Jews, *presbyteratum omnium Judæorum totius Angliæ* for life, and the patent hath in it, *prohibemus etiam ne de aliquo ad ſe pertinente ponatur in placitum niſi coram nobis aut coram capitali Juſtitia noſtra ſicut Charta Regis Richardi fratris mei teſtatur.* Here *coram capitali Juſtitia* is divided from *coram Rege*; the laſt ſignifying before the Kings perſon, although now pleas held in the Kings Bench before the ſucceſſor of the *Capitalis juſtitia*, are entred *coram Rege*, and ſome rolls (as of 44 *Hen.* 3.) have *placita coram Domino Rege de Tempore* Hugonis Bigod *Juſtitiarii Angliæ*, and alſo in the ſame bundle, *Placita coram* Hugone *le* Bigod *Juſtitiario Angliæ.* And *Bracton lib.* 3. *tract. de Actionibus cap.*

cap. 5. ſi actiones criminales ſint, in curia Domini Regis debent terminari, & hoc coram ipſo Rege ſi tangant perſonam ſuam: and in 2 *Ed.* 4. the King ſat in perſon.

Ad CAP. XIII.

4. *Scotiam, quæ ei quondam ut ducatus*] Of that matter ſee *Guil. Malmesburienſ. de geſt. reg. lib.* 2. *cap.* 6. *Roger. de Hovenden fol.* 311. *b. &* 377. *a. & b.* 461. *Matth. Paris ſub anno* 1072. *&* 1175. *&* 244. *pag.* 208. 872. *&* 1124. *ſub anno* 1252. *Matth. Weſtmonaſterienſ. ſub anno* 1054. and what he hath with *Thomas* of *Walſingham ſub anno* 1290. *& ſeqq.* and *Edward Hall* in his Henry 8. out of old monuments, alſo *Walſingham pag.* 85. 133. *&* 171. *Edit. Francofurt*, and *Florence* of *Worceſter* and *Henry* of *Huntingdon* where they ſpeak of King *Athelſtan*, and authority enough will appear againſt what *Buqhanan* writes in *lib.* 6. *&* 8. *Rerum Scoticarum*, touching the Engliſh Empire. For authorities in law of the ſame thing, ſee 11 *Edw.* 3. *tit* Briefe 473. 39 *Edw.* 3. *fol.* 35, *&* 36. 42 *Edw.* 3. *fol.* 2. *b.* 13 *Hen.* 4. *Brook tit.* Appeal 153. 6 *Rich.* 2. *tit.* protection 46. 8 *Rich.* 2. *tit.* Continual claim 13. 13 *Eliz. Dyer fol.* 304. *a. Rot. Parliament.* 21 *Ed.* 1. in Arce London, fol. 51. *& ſeqq.* beſide divers

vers originals of matters of that Nation yet remaining in the Treasuries of *Records*. Neither is that of *Godfrey* of *Malmesbury* unnecessary to be here remembered. He relates that when *William* II. was offended with *Malcolm* III. of *Scotland*, that he would not *secundum judicium Baronum suorum in curia sua rectitudinem Regibus Anglorum facere*; the Scottish King, *id agere nisi in regnorum suorum confiniis ubi reges Scotorum erant soliti rectitudinem facere regibus Anglorum, & secundum judicium primatum utriusque regni nullo modo voluit, & sic impacati ad invicem discesserunt.* He places this in 7 *Willielmi* 2. When this *Godfrey* lived I know not, his Annals begin with the Saxons, and end in 29 *Hen.* 1. He hath much of Northern matters, and the same that is in *Roger* of *Hoveden* often, and this very passage also is in *Hoveden*, *pag.* 265.

Ad CAP. XVII.

5. *Aliqui Regum*] But questionless the *Saxons* made a mixture of the *British* customes with their own; the *Danes* with old *British*, the *Saxon* and their own; and the *Normans* the like. The old laws of the *Saxons* mention the *Danish* (Danelage) the *Mercian* law (Mercenlage) and the *Westsaxon* law (West-

(Weſtſaxonlage) of which alſo ſome Counties were governed by one, ſome by another. All theſe being conſidered by *William* 1. comparing them with the laws of *Norway* (which he moſt of all affected, mainly, as I think, becauſe by them a Baſtard of a Concubine, as himſelf was, had equal inheritance with the moſt legitimate ſon. You may ſee for it *Roger de Hoveden fol.* 347. & 425.) he *quaſdam reprobavit* (as the words of *Gervaſe* of *Tilburie* in his Dialogue *de Scaccario* are) *quaſdam autem approbans illis tranſmarinas* Neuſtriæ *leges quæ ad regni pacem tuendam efficaciſſimæ videbantur, adjecit*; but ſo indeed, that ſuch as he in writing allowed, are, by a denomination from the greater part, called, *bonæ & adprobatæ antiquæ regni leges*, by *Matth. Paris* in his Mſ. life of *Fretherique*, Abbot of S. *Albons*; and *leges Edwardi Regis quæ prius inventæ ſunt & conſtitutæ in tempore Adgari avi ſui*; by *Roger* of *Hoveden*; and *leges æquiſſimi Regis Edwardi*, by *Ingulphus*, Abbot of *Crowland*, who lived under the Conqueror, and brought a copy of them from *London* to his Abby, as he remembers in his printed ſtory. And in a Mſ. copy, communicated to me, amongſt divers other, by that living Treaſure of Antiquity and moſt exquiſite monumeuts, my noble and much deſerving friend Sir *Robert Cotton*, and continued

tinued by *Peter* of *Blois*, after that which is in the print, ſucceed thoſe laws of *William* 1. there ſpoken of with this title in broken *French*, Ces ſont leis e les Cuſtumes qui li Reys William grantaſt a tut le puple de Engleterre apres la conqueſt de la terre ice les meiſmes que le Reys Edward ſun Eoſin tint devant lui. Ceo eſt a ſavoir, pais a ſant Eggliſe,&c. the context of them throughout being much corrupted. They were you ſee called S. *Edwards* laws, and to this day, are. But clearly, divers *Norman* cuſtomes were in practice firſt mixt with them, and to theſe times continue; as ſucceeding ages, ſo new Nations (coming in by a Conqueſt, although mixt with a title, as of the *Norman* Conqueror, is to be affirmed) bring always ſome alteration. By this well conſidered, That of the laws of this realm being never changed will be better underſtood.

6. *Et maxime Romani*] Underſtanding not this neither otherwiſe, but that the *Romans* had their laws in ſuch parts of this land, as they had their moſt civil government in. I mean in Colonies hither deduced. For every Colony was but as an image of the mother City, with like holy rites, like Courts, Laws, Temples, places of publick commerce, and for the moſt part with *Duumviri* in ſtead of Conſuls, and

Ædiles

Ædiles and *Decuriones* in lieu of a Senate: and it is clear that divers Colonies from *Rome* were in *Britain*, as at *Camalodunum* (now *Maldon* in *Eſſex*) that was deduced to be *ſubſidium adverſus rebelles* (as *Tacitus* ſays) *& imbuendis ſociis ad officia legum.* And an old inſcription remembers one *Aurelius Baſſus* to be *Cenſitor civium Romanorum Coloniæ v. Etricenſis quæ eſt in Britannia Camalodunum.* At *York* was alſo a Colony, an old piece of money of *Severus*, thus,

COL.EBORACUM.LEG.VI.VICTRIX.

Another inſcription is juſtifying the ſame in *Camden*, *pag.* 572. although *Aurelius Victor* calls it *Municipium* in his life of *Severus*. Likewiſe one was at *Cheſter*, anciently called *Devana*, *Deva*, or *Devuana* (as we ſee in *Ptolomy* and *Antoninus*) from the River *Dee*, witneſs an old coin of *Septimius Geta* thus inſcribed.

COL.DIVANA.LEG.XX.VICTRIX.

And a fragment of a ſtone in *Bathes* walls hath

DEC. COLONIÆ GLEV. VIXIT.
ANN. LXXXVI.

Glev, is *Gloceſter*, as the moſt learned *Clarentius Camden* teaches. Some think *Colcheſter* had a Colony too. But here are enough to ſhew, that the laws of *Rome* were uſed in *Britain*, as in other places where the *Romans* conquered. *Seneca ad Albinam cap.* 7. *Hic denique populus Colonias in omnes provincias miſit, ubicunque vicit Romanus habitat:* and *Gildas* of this land, *non Britannia ſed Romania cenſebatur.* So one anciently ſpeaking to *Mars*, *Romulus*, and *Claudius* (under whom the firſt Colonies were deduced hither) *in Catalect. vet. Poet. lib.* 1. *tit.* 7.

Cernitis ignotos Latia ſub lege Britannos.

After *Claudius*, the Britons began to learn the arts, to exceed the Gaules in wit and learning, and they that at firſt did *Linguam Romanam abnuere* (as *Tacitus* ſpeaks in the life of *Agricola*) did at length *eloquentiam concupiſcere. Inde etiam* (ſays he) *habitus noſtri honor & frequens toga; paulatimque diſceſſum ad delinimenta vitiorum porticus & Balnea & conviviorum elegantiam; idque apud imperitos humanitas vocabatur, cum pars ſervitutis eſſet*: and this is ſpoken of natural Britons, not Colonies. They affected, we ſee, Roman language, Rhetorique, Roman habit, Roman pleaſures, diet, and the

the like. Neither needed *Tacitus* to have mentioned their affecting the laws of *Rome*, when they were ſubject to them as a conquered people. And no doubt is, but they that imitated their Conquerors, and neighbour Colonies in the reſt, were not backward in effecting thoſe laws, for which the languages and rhetorique were moſt uſeful. *Juvenal* ſpeaking of *Gaul*, which he calls in *Satyr.* 7. ——— *nutricula Canſidicorum*, ſaies in *Satyr.* 15.

Gallia Canſidicos docuit facunda Britannos,
De conducendo loquitur jam rhetore Thule.

The eaſier might the uſe and ſtudy of the laws of *Rome* be received here, after this *Claudius* his conqueſt, in regard that thoſe which before and in ancient time had the determining of controverſies, and the learning of that kind in their hands, were by him forbidden to uſe any longer their Religion, for which they were moſt of all reverenced and regarded; I mean the *Druides*: and when their holy rites were prohibited by the Emperor, it's likely enough that the Nations governed by them in point of law (as the *Gaules* and *Britons* were) grew regardleſs, at leaſt remained nothing ſo reſpectful of them as before, and ſo became prone to receive the laws of *Rome*

which had both conquer'd them, and alſo taken away the reverence before given to the *Druides*. That the *Druides* before *Claudius* were the Lawyers and determin'd controverſies *I. Cæſar* is witneſs *lib.* 5. and 6. *de bello Gallico*, compared with the Catholique opinion in antiquity of an identity (at leaſt in their office, actions and learning) in *Gaul* and *Britain*. That *Claudius* took away their Religion, *Sueton* is author in his life, *cap.* 25. *Druidarum religionem apud Gallos dira immanitatis, & tantum civibus ſub Auguſto interdictam, penitus abolevit.* With him agrees *Seneca* in his *Apocolocyntoſis*. It may well enough be imagin'd, that the taking it away in *Gaule* extended to *Britain* which was both the nurſery of it, and mother too, as *Julius Cæſar* writes. If onely to *Gaule*; yet it's probable enough that the *Druides* in Britain could not but ſuffer by it, at leaſt in reputation. For that of *Pliny nat. hiſt. lib.* 30. *cap.* 1. *Tiberii Cæſaris principatus ſuſtulit Druidas Gallorum*; it's to be referr'd onely to *Rome*, as *Lipſius* well takes it in *Comment. ad Tacit. Annal* 12. *num.* 98. and in ſuch ſenſe as *Sueton* ſpeaks of *Auguſtus* his forbidding them *tantum civibus*. And indeed, although after *Claudius*, mention be in *Tacitus*, *Lampridius*, and *Vopiſcus* of them, yet ſhall you not find any ſign of their legal Power extant either

either in thoſe, or in *Ammianus Marcellinus* that ſpecially remembers them, but onely attributes a ſtudy of the myſteries of nature and a Pythagorical learning to them, under *Conſtantius* and *Julian*, as you ſee in his 15. book. For the matter of Colonies before ſpoken of, he that deſires accurate inſtruction of their nature and particular rights, may ſee, beſides what ſuch as writing of the *Roman* State univerſally have of it, *Lipſ. de Magnit. Romana l.* 1. *c.* 6. *& Marc. Velſer l.* 2. *Antiq. Auguſtæ Vindelicorum.*

7. *Leges Civiles in quantum Romanorum inveteratæ ſunt.*] The antiquity which he means of our Laws before the Civil of *Rome*, is onely upon theſe conditions. Firſt that the ſtory of *Brute* be to be credited, and then that the ſame kind of law and policy hath ever ſince continued in *Britain*. That ſtory ſuppoſes him here CCC. years and more before *Rome* built. But (with no diſparagement to our common laws) we have no teſtimony touching the inhabitants of the Iſle before *Julius Cæſar*, nor any of the name of it till *Polybius* in *Greek*, nor till *Lucretius* in *Latine*. *Polybius lib.* 3. ſpeaks of the *Britiſh* Iſles, and *Lucretius lib.* 6. hath *Cælum Britannum*. Neither is the book *de Mundo* attributed to *Ariſtotle* of like age with the falſely ſuppoſed author. In that, *Albion* is ſpoken of, but *Polybius* was before that was

ſpoken, if I deceive not my ſelf. All teſtimony of latter time, made of that which long ſince muſt be, if at all it were, is much to be ſuſpected. And though the *Bards* knew divers things by tradition, which they onely ſung, and ſo a ſpecious argument is made uſually for that common ſtory, becauſe they ſung it, yet I ſee not why any, but one that is too prodigal of his faith, ſhould believe it more then Poetical ſtory, which is all one (for the moſt part) with a fiction. For what were *Bards* but ſuch as ſung the praiſes of old ſuppoſed *Heroes* at their pleaſure? As *Athenæus* and *Marcellinus* of them, and, for latter authority, you may ſee in *Leg. Howeli. Dha. cap.* 25. That the chiefeſt dignity amongſt them was the Penkert of the country, whoſe place was of great eminency before others in the Welſh Court, & his office (when the King was pleaſed to hear any ſongs) was *Duo Carmina, ſcilicet unum de Deo, alterum de regibus, in interiore parte aulæ decantare.* Nor he nor the reſt were bound to truth of Story, but free to uſe invention, which they did in making a founder of the *Britiſh* name out of a community of ſound. 'Twas as eaſie to fetch *Brute* out of *Brutanie*, as it its often called, as it hath been to make *Francio* out of *Francia* or *Franci*, *Hiſpanus* or *Hiſpalus* out of *Hiſpania*, *Scota* out of

of *Scotia*, *Angela* for a queen out of *Anglia*, *Bato* out of *Batavia*, *Italus* out of *Italia*, and divers ſuch, which are all meer fictions or impoſtures. Scarce indeed is there a Nation in *Europe*, whoſe deduction from a like name of the firſt author, is of ſufficient credit. All teſtimonies any thing near the ſuppoſed time of thoſe firſt authors being loſt. This writer ſtands on *Brutes* arrival, and ſpeaks of it *Cap.* XIII. Yet if that would make ſo much for this ſide of antiquity of our laws, much more is to be had from the ancient and true origination of the *Britons*, which is from *Japhet* and his Poſterity. See *Camden*, and in the *Greek Scaligeran* Chronicle of *Euſebius*, the *Britiſh* Iſles, with all the Weſt, are given by *Noah*'s laſt will and Teſtament to *Japhet*; But ſo is *Italy* too, and the reſt of *Europe*. This way, might an equally ſtrong argument be for the like antiquity of both laws, of thoſe of *Italy* and *Britain*. And it would be ſuch a one as this author uſes from *Brute*. For queſtionleſs, if *Japhet* and his poſterity poſſeſt theſe parts of *Europe* (as they did) their Government was not without laws. But in truth, and to ſpeak without perverſe affectation, all laws in general are originally equally ancient. All were grounded upon nature, and no Nation was, that out of it took not their grounds; and

nature being the ſame in all, the beginning of all laws muſt be the ſame. As ſoon as *Italy* was peopled, this beginning of laws was there, and upon it was grounded the *Roman* laws, which could not have that diſtinct name indeed till *Rome* was built, yet remained always that they were at firſt, ſaving that additions and interpretations, in ſucceeding ages increaſed, and ſomewhat altered them, by making a *Determinatio juris naturalis*, which is nothing but the *Civil Law* of any Nation. For although the law of nature be truely ſaid Immutable, yet its as true that its limitable, and limited law of nature is the law now uſed in every State. All the ſame may be affirmed of our *Britiſh* laws, or *Engliſh*, or other whatſoever. But the divers opinions of interpreters proceeding from the weakneſs of mans reaſon, and the ſeveral conveniencies of divers States, have made thoſe limitations, which the law of Nature hath ſuffered, very different. And hence is it, that thoſe cuſtoms which have come all out of one fountain, *Nature*, thus vary from and croſs one another in ſeveral Commonwealths. Had the *Britons* received the ten or twelve *Tables* from *Greece* (which in *Rome* was, as *Livy* ſaies, *in immenſo aliarum ſuper alias acervatarum legum cumulo, fons omnis publici privatique juris*) cleerly the inter-

pre-

pretations and additions which by this time would have been put to them here, muſt not be thought on as if they would have fell out like the body of the *Roman* Civil law. Divers Nations, as divers men, have their divers collections and inferences, and ſo make their divers laws to grow to what they are, out of one and the ſame root. Infinite laws we have now that were not thought on D. years ſince. Then were many that D. years before had no being, and leſs time forward always produced divers new; the beginning of all here being in the firſt peopling of the land, when men by nature being civil creatures grew to plant a common ſociety. This rationally conſidered, might end that obvious queſtion of thoſe, which would ſay ſomething againſt the laws of *England* if they could. 'Tis their trivial demand, *When and how began your common laws?* Queſtionleſs its fitteſt anſwered by affirming, when and in like kind as the laws of all other States, that is, *When there was firſt a State in that land, which the common law now governs:* then were natural laws limited for the conveniency of civil ſociety here, and thoſe limitations have been from thence, increaſed, altered, interpreted, and brought to what now they are; although perhaps (ſaving the meerly immutable part of nature) now, in regard

gard of their firſt being, they are not otherwiſe then the ſhip, that by often mending had no piece of the firſt materials, or as the houſe that's ſo often repaired, *ut nihil ex priſtina materia ſuperſit*, which yet (by the Civil law) is to be accounted the ſame ſtill, as we ſee in *v. tit. de legat. 1. l. 65. ſi ita Sect. 2.* Little then follows in point of honor or excellency ſpecially to be attributed to the laws of a Nation in general, by an argument thus drawn from difference of antiquity, which in ſubſtance is alike in all. Neither are laws thus to be compar'd. Thoſe which beſt fit the ſtate wherein they are, clearly deſerve the name of the beſt laws. And none are beſt or worſt but *ſecundum quid*. But upon this ground more to the purpoſe might have been ſaid for the *Engliſh* common laws, compared with the civil of *Rome*. For it appears that the Emperors from *Juſtinian*, who died in D. LXV. of *Chriſt*, until *Lothar* the 11. in the year CIↃ. C. XXV. ſo neglected the body of the Civil law (which now againſt an expreſs Conſtitution of *Juſtinian*, commanding that it ſhould not be read nor taught in any place ſaving *Rome*, *Berytus*, and *Conſtantinople*, is profeſt in every Univerſity) that all that time none ever profeſt it. But when *Lothar* took *Amalfi*, he there found an old copy of the *Pandects*, or *Digeſts*, which as

ſa precious monument he gave the *Piſans* (by reaſon whereof it was called *Litera Piſana*) from whom it hath been ſince tranſlated to *Florence*, where in the Dukes Palace it is never brought forth but with Torch-light, and other reverence. Under that *Lothar*, began the Civil law to be profeſt at *Bologna*, and *Irner*, or *Werner* (as ſome call him) firſt made Gloſſes on it about the beginning of *Frederique Barbaroſſa* in CIↃ. C. L. of Chriſt, and *Bologna* was by *Lothar* conſtituted to be *Legum & Juris Schola una & ſola*. And this was the firſt time and place of profeſſion of it in the Weſtern Empire. You may ſee *Odofredum apud Sigonium de regno Italiæ lib.* 11. *&* 7. *& Paul. Merul. Coſmogr. part.* 2. *lib.* 4. *cap.* 23. Why were they ſo neglected near DC. years in the Empire, if their excellency were ſo beyond others, as is uſually ſaid by many, that to the purpoſe, know nothing of either them or ours? This part of ſtory of them I have noted elſewhere in the Preface to the *Titles of Honour*. And clearly you ſee the profeſſion of them is not ſo ancient in the Weſtern Empire, as the lateſt of time, to which ſome moſt ignorantly refer the beginning of the common law; I mean as the *Norman William*, who arrived in the year CIↃ. LXVI. I think not, that good diſcretion can, out of any of this or the like add much

honor

honor to, or detract from either *Common* or *Civil* law; yet its fit to be remembred in anſwer of ſuch as ignorantly fetch a reaſon out of the antiquity of the profeſſion of the one. As if the profeſſion begun under *Lothar*, and ſince thus continued, were not meerly new, and not a continuance of what was in uſe under *Juſtinian*. But hereof too much.

Ad CAP. XXI.

8. *Teſtes.*] But ſome trials by our law have alſo Witneſſes without a Jury: as of the life and death of the Husband in *Dower*, and in *Cui in vita*. Examples thereof are in *Bracton lib.* 4. *tract.* 6. *cap.* 7. 2 *Ed.* 2. *tit.* **Trial** 46. 8 *Ed.* 2. *eod. tit.* 95. 9 *Ed.* 2. *tit.* **Judgement** 231. 2 *Eliz.ab. Dyer fol.* 185. *a.* and in 13 *Eliz.ab. Dy. fol.* 301. *a.* in Error by an infant to a reverſe fine, both inſpection and the teſtimony of four witneſſes concur to prove his infancy, and in 26 *Ed.* 3. *fol.* 70. *a. pl.* 6. a death in *Bretagne*, is ſaid, ſhall be tried by proofs. But all this is of iſſues which properly have no viſne, whence a Jury may be. The courſe of Declarations alſo at this day ſhew, that witneſſes were reſpected in the beginning of every action. The concluſion is always *Et inde producit ſectam.* Which *ſecta* or

or *ſuit*, in law-language, is nothing but witneſſes to prove his action, as in the Courts of *writs* of *Right* they were wont to declare, *& hoc paratus ſum probare per hunc liberum huminem meum A. B. & ſi quid*, &c. which was a tender of Battel, as the other is of ſuit or witneſſes. See *Glanvil lib.* 2. *cap.* 3. And thoſe proofs of the death of the husband in dower are called *ſecta* by *Bracton fol.* 302. *a.* and in *Nov. Narrat.* ſuit & barraign bon is onely *ſecta & diſrationatio bona*, i. good proof to maintain the count. In ancient time this ſuit, or witneſſes were examined before any other iſſue, as in 18 *Hen.* 3. *Coram Rege apud Windſore rot.* 13. *in dorſ. in Turr. Lond.* In a *Recordare loquelam* that was in the Biſhop of *Saliſburies* court at *Sunnings*, the action being for a Mare, by *Walklin de Stok* againſt *William de la Guilhalle*, the entry is, *Et Willielmus producit* ſectam *ſuam & ipſi quos produxit per ſe diſcordantes ſunt in multis, & in tempore, & in aliis circumſtantiis, quia quidam dicunt quod quadam equa mater ipſius pullani empta fuit*, &c. *& quidam dicunt*, &c. *Et Walkelinus producit* ſectam *qui concordati ſunt in omnibus & per omnia & dicunt omnes quos ipſi producit per ſe*, &c. The proofs of both ſides are called *ſecta*. It was either this or ſome like caſe, that *Shard* intended in 17 *Ed.* 3. *fol.* 49. *b.* in *John Warreins*

Warreins caſe, ſpeaking of a Juſtice that examined the ſuit, and it appears there that under *Ed.* 3. the tendering of ſuit or proofs was become onely formal, as at this day, like the *plegii de proſequendo*. But in *Hill.* 44 *Hen.* 3. *Coram Rogero de Thurkelby & ſociis ſuis Juſtitiariis de Banco Rot.* 16. *in dorſo.* One *Gilbert Chytein* brought a *Replevin* againſt *William le Fouler*, and the defendant pleads *non cepit*, &c. *Et hoc offert defendere contra ipſum & ſectam ſuam ſicut Curia conſideraverit. Et quia prædictus Gilbertus nullam* ſectam *produxit verſus prædictum Willielmum, conſideratum eſt quod prædictus Willielmus eat inde ſine die, & Gilbertus in miſericordia.* See *ad cap.* 32. I omit, that in *Engleſherie* anciently, in a *Native habendo*, in proving a *deed denied*, and ſuch like, witneſſes by the common law are required as the ſpecial trial.

Ad CAP. XXIV.

9. **W***Apentagia.*] In *Ethelreds* laws, which the Abbot *John Brampton* hath in a Ms. ſtory, *cap.* 4. *Habeantur placita in ſingulis* Wapentakis, *ut exeant ſeniores* 12. *thayni & præpoſitus cum eis & jurent ſuper ſanctuarium quod eis dabitur in manus quod neminem innocentem velint accuſare vel noxium concelare.* And the

the laws called the *Confeſſors*, *cap.* 33. ſay that *York-ſhire*, *Lincoln*, *Nottingham*, *Leyceſter*, and *Northampton*, call that *Wapentachium quod Angli vocant Hundredum & non ſine cauſa.* For he that was *præfectus Wapentachii*, or high Conſtable of the *Wapentach*, came amongſt them at the *Hundred* or *Wapentach* court, and with regardful entertainment, they all *cum lanceis ſuis ipſius haſtam tangebant, & ita ſe confirmabant per contactum armorum, pace palam conceſſa. Anglicè* (ſo ſay thoſe laws) *arma vocantur* **Waepun**, *&* taccare *confirmare, quaſi armorum confirmatio, vel ut magis expreſſe ſecundum linguam Angliam dicamus*, **Wapentac** *armorum tactus eſt.* **Waepun** *n. arma ſonat*, **tac** *tactus eſt.* Doubtleſs this deduction of the name ſavours of the truth. For amongſt the old *Germans* (whence our *Anglo-Saxons* came) that uſed to meet armed in their courts, when any one had ſpoken, if he were diſliked, *fremitu aſpernabantur*, if liked, *frameas concutiebant* (as *Tacitus* witneſſes) which well includes this touching or ſtriking together of weapons. *Honoratiſſimum* (ſaies he) *aſſenſus Genus eſt, armis laudare.* The Wapentakes, Hundreds, and Counties were firſt inſtituted by K. *Alfred*, about the year DCCC. LXXX. Of him, *Ingulphus p.* 495. *b. Totius Angliæ pagos & provincias in Comitatus* pri-

primus omnium Commutavit. Comitatus in Centurias, id eſt, Hundredas, *& in* Decimas, *id eſt, Tithingas diviſit.* See alſo *Malmesburienſ. de geſt. reg. lib. 2. cap. 4.*

10. *Villas.*] *Villa & Villata* de *Norwich* de *Wallingford* and the like are in old Rolls, which alſo ſometime call like places, and the ſame, *Burgi* or *Civitates.* And the city of *Chicheſter* is *Villata de Ciceſtria* in *Itin. Suſſex* 47 *Hen. 3. rot. 25. in dorſo.* And there *rot.* 44. *Burgus de* Horſham *venit per* XII. *Villa de* Brembre *venit per* 12. *Villa de* Shoreham *venit per* XII. yet *Bramber* and *Shoreham* are Boroughs as well as *Horſham.* Parliamentary Boroughs. But alſo *Rot.* 38. is *Burgus de* Seford *venit per* XII. which is no Parliamentary Borough. The reſt all which now ſend Burgeſſes to parliament in *Suſſex*, as *Lewes*, *Midhurſt*, *Grenſtede* and *Arundel*, are in that Eire called Boroughs.

11. *Hamletis.*] *Hameau* or *Hamel* is a member or Part of ſome ville or town, as you may ſee in 14. *Aſſiſ. pl. 9. & 3 & 4 Ph. & Mar. Dyer fol.* 142. it came firſt from Ham or Heim in old Saxon, ſignifying a circuit or territory, *Circulum vel ſeptum quo Pagi ſive Territorii cujuſpiam limites includuntur*, as the moſt noble *Hans Douze* notes out of the Records of *Holland* in *Annal. Holland. lib. 2. & 7. fol.* 388.

12. *Annale*

12. *Annale est.*] But before the statute of 14 *Ed.* 3. *cap.* 7. Sherifs continued usually in their offices longer.

13. *Nec duobus.*] It should be *nec tribus* by *Stat.* 1 *Rich.* 2. *cap.* 11.

Ad CAP. XXV.

14. DE *Hundredo.*] For the number of the Hundredors at this day, see the statutes of 35 *Hen.* 8. *cap.* 6. & 27 *Eliz. cap.* 6.

Ad CAP. XXVI.

15. FAlsum fecerunt sacramentum.] The ancient punishment in *Attaint* was as its here described, and the like in conspiracy for perjury. See *Glanvil lib.* 2. *cap.* 19. 4 *Hen.* 5. *tit.* Judgement 220. 27 *Assis. pl.* 59. & 46. *Assis. pl.* 11. The judgement is called *the villanous judgement in* 14 *Ed.* 3. *fol.* 34. *b.* See *Bracton* also *lib.* 4. *tract.* 5. *cap.* 5. & *Flet. lib.* 5. *cap.* 21. & *Stamford fol.* 175. And the case in *Temp. Ed.* 1. *tit.* Attaint 70. is more large in my Ms. Report of 21 *Ed.* 1. *fol.* 58. it is brought against the Abbot of *Westminster*, as there its shewed, but the judgment by *Weylond* is in these words, Pur ceo agarde cest court que ceux de l' enquest perdent franche ley de ceo jour en avant a tous jours e lour

terres e leur chateus a la volonte le Roy, e lour cozs a la priſon, e John ſeit aſſous de cele rent e ſeit reſtoze de ſes damages. But ſee now Stat. 23 *Hen.* 8. *cap.* 3. another judgemen in *attaint.*

16. *Nec alicubi recipientur in teſtimonium veritatis.*] Our books expreſs that, by que miſe ne ſoit en teſtimoignance de veritye, 24 *Ed.* 3. *fol.* 34. *b.* 33 *Hen* 6. *fol.* 55. *a.* It is titled the loſs of frank law, franch ley in 27. *Aſſiſ. pl.* 59. & 46. *Aſſiſ. pl.* 11. that is, he which is thus convict of perjury, ſhall be no more worthy as *Bracton* calls it *lib.* 4. *tract.* 4. *cap.* 5. & *cap.* 19. *Sect.* 2. where his words are of ſuch a one, *Legem amittit, & ideo dicitur quod non eſt ulterius dignus lege quod Anglice dicitur,* he ne is othes wozthe that is enes gylty of oth broken. Which agrees with K. *Knout* his law, *cap.* 33. that one ſo convicted ne beo thanon forth athes wyrthe, the ſelf ſame words almoſt, being in *leg. Edwardi ſenioris cap.* 3. & *leg. Athelſtan cap.* 25. That which is *legem amittere* in this ſenſe in *Bracton*, is *liberam legem amittere* (anſwering to the loſs of frank law) in the entries of judgement againſt them, and *legem terræ amittere* in *Glanvil*, and ſometime in *Bract.* & *Fleta.* See alſo *Regiam Majeſtatem lib.* 1. *cap.* 14. *Sect.* 5. Hence may be truly underſtood that of the grand Charter,

ter, *cap.* 29.——*nec ſuper eum ibimus nec ſuper eum mittemus, niſi per legale judicium Parium ſuorum vel legem terræ.* I would Engliſh it thus: *Neither will we enter on his poſſeſſion nor commit him* (for in that place of the Charter of 17. of K. *John* by which this was made, it is *nec eum in carcere mittemus*, perhaps it ſhould be *carcerem*, as the language requires) *but by legal judgement of his Peers, or men of his condition* (that is by Jury) *or by tryal of him by oath, or wager and doing his law. Lex terræ* here is onely as it ſignifies in *amittere legem terræ*. And Ley gager and a Jury are the two trials, as I ſuppoſe, there thought on. And indeed in old rolls nothing is more uſual then in criminal actions (not capital) and civil, of any kind to admit *Ley gager*, as in *Attachments* upon *prohibitions, quare impedits* and the like, which is againſt all knowledge and practice of law in later ages. Every one knows that at this day *Vadiare legem* is to offer the oath upon trial that way, and *facere legem* is to make the oath, all which ſhew that *lex* and *lex terræ* ſignifie in this notion onely the Oath of a man not diſabl'd by law. And, in that ſtatute, it is meerly the oath upon *Ley gager*.

17. *Calumnire poteſt* 35. *homines.*] Peremptory challenge is now reduced to xv. by *ſtat.* of 22 *Hen.* 8. *cap.* 14.

Ad CAP. XXXII.

18. SI *quæ supra altum mare*, &c. *coram Admirallo*] As then, so now, the Admiralty hath Jurisdiction of things done upon the main sea, and what that Court might or may do is shewed and limited by the statutes of 13 *Rich.* 2. *cap.* 5. & 15 *Rich.* 2. *cap.* 3. & 2 *Hen.* 5. *cap.* 6. The first case in our law extant touching marine jurisdiction is in *Temp. Ed.* 1. *tit.* Avowry 192. in a *Replevin* brought of a ship upon the coast of *Scarborough*, where no mention is of the Admirals authority, as the print is in the Abridgement, but conisans of it is allowed to the common law. Yet in my Ms. Report of 25 *Ed.* 1. *fol.* 82. *b.* the case is thus more at large, and expresly speaks of the Admiral, *William Crake* de *Holtham* fuit sommon a respondre a *Robert de Benfo* de play pur que il avoit pris une sune neef pris de xl. l. en la mer juste la costere de *Scardburn* & de yleke le amen a *Holtham* en le County de *Norff. Mutford.* del hore qu' il avute Conte de une prise jete en la mer que est hors del conte issi que si pais se joyn fist, il ne savereint a q̄l viscont mander pur fere vener pays e do judgement si ceyns pussont de ceo conuster. *Ed' autre part*, il lysont assigne Admiral de par le Roy sur la mer a oyer & terminer les pleynts

de

de chose fait in mer, e nentendons point que vous volys a eux tolyr jurisdiction, &c. *Bery*, Nous avons poer general per my tut Engleterre, mes del poer des Admirals dont vous parles ne savons rien, ne rien de nostre poer a eux volomus assigner, si ceo ne seist per commandment le Roy de quey vous ne monstres rien, &c. *Mutf.* sire le luy on ils dient la næf este pris nest in nul visnes de que, &c. *Haward*, il est issint visne que si un home occist un auter la il serra pris e amesnal terre e pende ausi ben come pur fet fet sur la terre. *Metingham*, nous vous dions que nous avons dions que nous avons ausi ben poer de conisans de fet fet en mer come sur terre, dont agard que vous respondes ouster. Unless they meant there, that the visne might be out of the adjoyning County, as in old trials of issues in *Wales*, I conceive not their disallowance of the exception against the place, whence properly no visne could be. For such trials of issues in rising in *Wales*, or in the Counties Palatin by the adjoyning Counties, see especially, 18 *Ed.* 2. *tit'* Assise 382. 24 *Ed.* 3. *fol.* 33. *b.* 30 *Hen.* 6. *fol.* 6. *b.* 35 *Hen.* 6. *fol.* 30. *a.* 45 *Ed.* 3. *tit.* Visne 50. I have transcribed the case according to the very letters of my copy. It seems by this that in those times the common law had conisans of things done upon the

Brittiſh ſea, however it afterward kept its limits *infra corpus Comitatus*, leaving the Sea to the Admiralty. Some caſes in old records juſtifie it alſo. *In Placit.* 37 & 38 *Hen.* 3. *Rot.* 10. *Devon.* One *Galfredus de Leyſina* brings *treſpaſs* againſt *Ralf de Valle torta*, and others, *quare aſportaverunt bona quæ fuerunt in navi quæ fuit* Clementis *de* Bolan *quæ nuper periclitabatur in Coſtera de* Brikeſham *quæ bona dominus Rex dedit prædicto Galfredo tanquam wreccum maris*, &c. The defendants plead, in effect, the general iſſue, *& ſic ad patriam*, although, through want of form in the declaration, it appears not whether the goods were taken, being in or out of the ſea, yet it ſeems they held that matter indifferent. So in *Itin. Suſſex apud Ciceſtriam* 47 *Hen.* 3. *Rot.* 10. A fragment of a torn roll left in the bundle, hath this ſigne of a declaration remaining, *Rogerus de Levere, & Radulphus de Levere queruntur de* Richardo *de* Hateſuld——*proxima ante feſtum ſancti Martini hoc anno ſe credebant ſalvo*——*ibidem fregerunt navem ſuam ſuper quendam locum*——*navis & ſocii ſui circiter quinque ſubmerſerunt.* Theſe words are onely left upon the 9. roll, the reſt being by ſome wicked hand, purpoſely, it ſeems torn off. But its eaſily conjectur'd that this was an action on the caſe, brought by one that had commit-

mitted himſelf or his goods to the defendants care for his paſſage, with his company, over ſea, and that the offence was, that the defendant had by negligence made ſhipwrack on the ſea, or ſome ſuch like; and though the *Aſſumpſit* at land might make ſuch an action at this day, maintainable at common law, according to the learning in *Dondales* caſe *Rep.* 6. *fol.* 47. yet in thoſe times ſo ancient, I cannot imagin the difference of a contract at land from one at ſea was thought on. Likewiſe in *Trin.* 50 *Hen.* 3. *apud Weſtm. in Banco rot.* 22. the entry is, *Suff. Abbas Weſtmonaſterii per attornatum ſuum obtulit ſe quarto die verſus* Petrum *filium* Johannis, Richardum *fratrem ejus*, Walterum Cheyney, Auguſtinum *filium Jocei*, Johannem *fratrem ejus*, Richardum Andred, Anthonium Clunch, & Richardum Silkento *de placito, cum homines ipſius Abbatis nuper duci feciſſent quandam navem ſuam per Coſteram maris prope* Dunwicum, *bonis & catallis ipſius Abbatis & hominum ſuorum cariatam, iidem* Petrus & *alii ſimul cum Auguſtino filio Johannis navem prædictam cum bonis & catallis prædictis ab hominibus ſuis prædictis abſtulerunt, & navem & bona & catalla ſic ablata detinent ad damnum ipſius Abbatis & hominum ſuorum ſexaginta librarum & contra pacem*, &c. Unleſs here the ſhip were taken upon the ſea *ſuper*

Costeram maris I understand it not. But touching their trials in the Admiralty, in some hands is extant a Ms. de l'Office del Admiralty, translated into Latin by one *Thomas Roughton*, calling it *De officio Admiralitatis* (the use of two copies of it, with the roll of *Oleron*, written all about *Hen.* 6. was communicated to me by that learned and truly sufficient Sir *Walter Raleigh* Knight) where inditements and trials are supposed to be by a Jury of 12. as at common law. But the book it self is rather a monument of antiquity (yet not above about *Hen.* 6.) then of authority, and rather as a purpose of what was in some failing project, then ever in use and judgement held authentical. Most of it is against both the now receiv'd and former practice. Yet these things hath it worth observation, that is, constitutions often mentioned touching the Admiralty of *Hen.* 1. *Richard* 1. King *John* and *Edward* 1. which are elsewhere hardly found. In *rot. Pat.* 23 *Ed.* 1. *William Leyburn* is Admiral, and often mention is after that of the Admirals of the North and South seas, the distinction being the *Thames* mouth, as *Trent* was wont to be for the general Escheatorship, and is for the Justiceship of the Forests. The first mention of the *Admiral* in our printed law, is in 8 *Ed.* 2. *Itin. Canc. tit'* Cozont 399. with

that,

that, ſee 40 *Ed.* 3. *fol.* 44. 40 *Aſſiſ. pl.* 25. *Stamford cap.* **Des Coroners**, Sir *Henry Conſtables caſe in Rep.* 5. *fol.* 107. & *Hill.* 2 *Jacob. Philips caſe in Com. Banco*, & 19 *Hen.* 6. *fol.* 7. *a.* and note that in 7 *Rich.* 2. *Statham tit.* **Treſpas** 54. a juſtification is in treſpaſs in theſe words **nous les paiſomous en le haut mere ovesque les** Normans **quar ſont enemies le Roy, judgement ſi action**, and held good. If this iſſue offered, riſing wholly on the main ſea, might not be tried at the commmon law, how could it be good? either a traverſe muſt have been to the taking in the count, or elſe the replication muſt have made the iſſue upon two affirmatives (which is againſt the courſe of our law) or elſe queſtionleſs they took it in thoſe times triable, as it was pleaded by a Jury of the viſne, either adjoyning to the coaſt (which is fitteſt) or of the place where the action was laid. See alſo 46 *Edw.* 3. *Statham tit.* **Treſpas** 38.

19. *Curiæ Conſtabularii*] That court and the great Officer, chief Juſtice of it, hath been long diſcontinued. Neither was any continuing *High Conſtable* of *England* ſince 12 *Hen.* 8. when *Edward* Duke of *Buckingham* was beheaded. He was the laſt High Conſtable, and by inheritance of tenure from the *Bohuns*, as you ſee in 6 *Hen.* 8. *Kel. fol.* 170. *& ſeq.* & 11 *Eliz.*

Eliz. Dy. 285. *b.* & *vide Rot. Fin.* 3 *Ed.* 1. *memb.* 14. The Court is that which was titled the *Court of Chivalry*, wherein all matters of Armes, Treaſon committed beyond ſea, War, and the like, which could not be tried at the common law, were determinable *ſummarie & de plano ſine ſtrepitu & figura judicii*, as the words are in *Part.* 1. *patent.* 7 *Ed.* 4. *memb.* 9. where it appears the office had been given to *John* Earle of *Worceſter*, to hold plea of ſuch things *quæ in Curia Conſtabularii ab antiquo videlicet tempore Domini Willielmi Conqueſtoris quondam Angliæ progenitoris noſtri ſeu aliquo tempore citra tractari audiri examinari & decidi conſueverunt aut de jure debuerunt*, who ſurrendering his patent, in the ſame termes with particulars of the office, it is granted to *Richard Widevil* Earl of *Rivers*, the Kings father in law, for life, and after his death to *Anthony Widevil*. By the 1. *ſtatute of* 13 *Rich.* 2. *cap.* 2. & 1 *Hen.* 4. *cap.* 14. the office and juriſdiction of the court is beſt deſcrib'd, you may ſee 37 *Hen.* 6. *fol.* 3. & 20. 30 *Hen.* 6. *fol.* 5. 6 *Hen.* 8. *fol.* 171. *b. Brook tit.* **Prerogative** 31. Some Records are extant of the whole formal proceeding by the law of arms in this Court, as ſpecially that of 17 *Rich.* 2. in the Tower concerning the Caſtel of *Breſt*, between *Hanley* and *Roches*. Their trials were by

by Battel or Witneſſes. Special commiſſioners have now a good part of this juriſdiction. In 2. *part. rot. Patent.* 23 *H.* 6. *memb.* 20. *Tho. Kent.* Dr. of law is made *ſubconſtabularius angliæ* for life.

20. *Legem mercatoriam.*] that is ſuch as the law of the ſtaple in *ſtat.* 2. 27 *Ed.* 3. *cap.* 2. Mention is of it in *Regiſt. Orig. in Computo fol.* 135. *a. & Fitzh. Nat. Br. fol.* 117. D. indeed the nature of this law is well expreſt by *Bartol.* in *π. tit. Mandati vel contra l.* 29. Sect. *quædam* 4. ſpeaking of the Merchants court (which name may well be given to the court of **Wee poudzous.**) *Nota*, ſaith he, *quod in Curia Mercatorum debet judicari de bono & æquo, omiſſis juris ſolemnitatibus. Hoc non dico quod debeat intelligi non habito reſpectu ad jura civilia quod eſſet contra* l. bona fides tit. Depoſiti, *ſed debet intelligi non inſpectis ſolennitatibus juris, hoc eſt non inſpectis apicibus qui veritatem negotii non tangunt, ut ſi eſſet intentata actio directa cum competebat utilis, vel non erat conteſtata lis & ſimilia.* For in common ſociety of Merchants, and mutual contracts, equity and good conſcience rather then ſtrict laws is required. *Tryphonius π. tit. Depoſiti vel contra l.* 12. *Bona fides quæ in contractibus exigitur, æquitatem ſummam deſiderat.* A ſpecial caſe of this law Merchant is in *Itin. Derb.* 2 *Edw.* 2. *Ms.* where *John Combton* brings debt *ſecundum*

dum legem mercatoriam upon a tally, against another Merchant, and tenders suit by two witnesses: the defendant wages his law, but the judgement is thus by *Ornesby* pronounced, John de Combton Marchand port un brief ciens vers on *Rauf*. Marchand & demande vi. marks par un Justicies forme selon la ley Marchand (it had been commenc't by *Justicies*, and came out of the common place into the Eire) & ad mis avant un taille la quelle il tender a prover per ii s. p *Richard* & par *Geffrey* que esteyen tal blee mesurer (the debt was due for corn) & al liverer, mes vous per vostre ley vous voudres coverer la quele cest cort en ceo cas ne voet my resceiver & refuses la pve que il vous tend. selon ley Marchand & selon la nature de sun brief, per que agard cest court que John rescovere sa debt vers vous come vers non defendu & ses dammages de cent sous. See for this matter of suit, *Ad cap.* 21.

Ad CAP. XXXIII.

21. S*Atagentes proinde leges Civiles ad Angliæ Regimen producere.*] I confess I here understand him not. What Kings of *England* ever desired the Civil laws of *Rome*? I have read of a protestation against them in Par-

Parlament by the King and Lords, which you may see in *Rot. process. & jud.* of the appeal of *Thomas* Duke of *Glocester*, and others, against *Alexander* Archbishop of *York*, *Robert de Veer* Duke of *Ireland*, *Michael de la Pole E.* of *Suffolk*, and *Robert Tresilian* chief Justice, *in Rich. 2. Parlamento Westm.* 3 *Febr. anno* 11. where upon default of the appellees, the appellants desire that the court would proceed to judgement, sur quoy les dits Roy nostre seignior & seigniors du Parlament pristront deliberation tanq; lendemain le marcedy prochein ensuant, a quel temps les *Justices & Sergeants & autres sages du ley de roialm* & auxint les *sages de la ley Civil* feuront charges de par le Roy nostre dit seigneur, de doner loial Counseil as seigneurs du Parlement de duement ꝓceder en la causa de l' appel susdit, les queur *Justices Sergeants* & *sages de la ley du roialm* & auxint les dits *sages de la ley Civil* pristront ent deliberation, & responderont, as dits seigneurs du Parlement que ils avoient veve & bien entendue le tenor du dit appell, & disoient q̄ mesm' l' appele ne fust pas fait ne afferme solonq; l' ordre que l' une ley ou lautre requireit, sur quoy les dits seigneurs du Parlement pristeront ent deliberation & avisement, & p assent du Roy nostre dit seigneur & de lour common accord estoit declare que en ci haut

crime

crime come eſt prẽdue en ceſt appelle que touce le perſon du roy nece dit ſeur q̃ leſtat de tout ſon roialm, perpetre perſons que ſont peers du roialme, oveſque autres, la cauſe ne ſerra ailoꝛs deduc que en parlement, ne per autre ley que ley q̃ cours du parlement q̃ q' il appertient as ſeignours du parlement q̃ a lour franchiſe q̃ libertie d'ancien cuſtume du parlement deſtre juges en tieux cas, q̃ de tieux cas a iugger per aſſent du parlement, pur aſſent du roi, q̃ que enſi ſerra fait en ceſt cas, par agard du parlement, pur ce que *le roialme d' Engleterre n' eſtoit devant ces heures ne al' entent du roy noſtre dit ſeignior & ſeigniors du parlement unques ne ſerra rule ne governe per la ley Civil*, q̃ auxint leur entent neſt pas de reuler ou governer cy haute cauſe come ceſt appell eſt, que ne ſerra ailoꝛs trie ne termine que en Parlement come dit eſt, per cours proceſſe q̃ oꝛdze uſe en aſcun court ou place plus bas deins meſme le roialm, queux courts q̃ places ne ſont que executoꝛs d'aunciens leys q̃ cuſtumes du roialme q̃ oꝛdinances q̃ eſtabliſhments du parlement, q̃ ſeuit adiſe au meſmes les ſeigneurs du parlement par aſſent du roy noſtre dit ſeigneur, que ceſt appel fuit fait q̃ afferme bien q̃ aſſets duement q̃ le parceſſe d'icelle bone q̃ ferme ſolomnes les leys q̃ cours du parlement, q̃ pur tiel l' agarderoit q̃ aiuggeroit.

it. I remember alſo King *Stephen* his publique edict againſt the laws of *Italy*, but remember not any ſtory or authority teaching that any of our Kings would have had them here uſed. That of *Stephen* is related by that noble and moſt learned Frier *Roger Bacon* in his *Compendium Theologiæ*, or his *Opus minus* (both thoſe names are of one Ms. book) where ſpeaking of the Civil laws of *Italy*, and that they are abuſed, and too much affected by Clergy men, leaving their profeſſion to ſtudy thoſe laws, he thus adds, *Præterea omne regnum habet ſua jura quibus laici reguntur; ut jura Angliæ & Franciæ, & ita ſit juſtitia in aliis regnis per conſtitutiones quas habent ſicut in Italia per ſuas. Quapropter cum jura Angliæ non competant ſtatui clericorum, nec Franciæ, nec Hiſpaniæ, nec Almaniæ, ſimiliter nec jura Italiæ ullo modo. Quod ſi debeant clerici uti legibus patriæ, tunc eſt minus inconveniens ut Clerici Angliæ utantur legibus Angliæ & Clerici Franciæ utantur legibus Franciæ, quapropter maxima confuſio Clericorum eſt quod hujuſmodi conſtitutionibus laicalibus ſubduntur colla. Rex quidam Angliæ* Stephanus *allatis legibus Italiæ in Angliam publico edicto prohibuit, ne ab aliquo retinerentur, ſi igitur laicus princeps laici principis alterius leges reſpueret, multo magis omnis clericus deberet reſpuere leges laicorum.*

rum. Addo etiam quod magis concordant jura Franciæ cum Angliæ & è converso propter vicinitatem regnorum & communicationem majorem gentium istarum, quam Italiæ & illarum. Quare deberent magis clerici Angliæ subjicere se legibus Franciæ & è converso, quam legibus Lombardiæ. This was a kind of invective against the receiving of the Civil law amongst the Clergie in any other nation, saving that wherein it was first bred, that is, the *Italian*. Our stories have no mention of this edict of *Stephen*. But it is in an author of better authority (in regard of his time) then Frier *Bacon*, I mean *John* of *Salisbury* living under *Hen.* 2. He in his *De Nugis Curialium lib.* 8. *cap.* 22. speaking of such as too prophanely medled with what the Clergy had to do, goes on with *alios vidi qui legis libros deputant igni nec scindere verentur si in manus eorum pervenirent jura vel Canones. Tempore Regis* Stephani *a regno jussæ sunt leges Romanæ quas in Britanniam domus venerabilis patris Theobaldi Britanniarum primatis asciverat. Ne quis etiam libros retineret edicto regio prohibitum est, & vicario nostro indictum silentium. Sed, dei faciente, eo magis virtus legis in aluit, quo eam amplius nitebatur impietas infirmare.* Whereas Frier *Bacon* takes it clear that he prohibited the Civil laws, this *John* of *Salisbury* (a man of great place and autho-

authority both with the King and Pope) ſeems to affirm it onely of the Canon law. For he remembers it as an offence to the Church. Indeed in Archb. *Theobalds* time, both the Canons and Civil law began to be publiſht, and its like enough that he might bring in *Ivo*'s or *Gratian*'s Decree. *Ivo*'s was written in time of *Hen.* 1. and *Gratians* under King *Stephen*. That *Theobald* was before Abbot of *Bec* in *Normandy*, and went to *Rome* for his Pall, and ſo, it ſeems, brought thoſe laws home with him in 3 *Stephani Regis*. Its marvail that our ſtories are ſo ſilent of this of King *Stephen*. But ſee the Monks *ſub anno* 1139. and ſpecially, *Guil. Malmesb. hiſt. Novell.* 2. *fol.* 10. *b.* touching the councel of *Wincheſter*, where the ground of his Prohibition perhaps ſhews it ſelf.

Ad CAP. XXXIV.

22. *Quod Principi placuit.*] That is *Ulpians* in *π. tit. de Conſtit. Princip. l.* 1. *Quod Principi placuit legis habet vigorem, utpote cum lege Regia, quæ de imperio ejus lata eſt, populus ei & in eum omne ſuum imperium & poteſtatem conferat.* The ſame is in *Inſtit. tit. de Jure nat. Sect. ſed & quod*, and thence have the Greek lawyers their ὅπερ ἀρέσκει τῷ βασιλεῖ νόμος

&c. as *Hermenopulus* a Judge of *Thessalonica* expresses it, *Procheir. lib. a. tit. a.* and the Emperor is in *Near. Diatrax.* 105. *cap.* 2. titled Νόμος ἔμψυχος, a *living law*. The two Codes of *Theodosius* and *Justinian*, the *Gregorian* and *Hermogenian* Codes, the *Neara Diataxeis* or *Authentiques*, and the rest of the *Novellæ* are nothing but Constitutions by the Emperors, to whom the State of *Rome* permitted all by the *lex Regia* that was before in the people of *Rome*.

Ad CAP. XXXIX.

23. *Prolema te matrimonium.*] This point of Civil law, is text in *C. tit. de Naturalibus lib.* 10. *cum quis. Quamvis* (saies *Justinian*) *non est iniquissimum ipsam stirpem secundæ posteritatis priorem quasi injustam excludere, cum gratias agere fratribus suis posteriores debeant, quorum beneficio ipsi sunt justi filii, & nomen & ordinem consecuti.* For the birth of the first is often cause of the marriage following. But it is limited by some Doctors, that the woman be before *inconcubinatu, infamilia retenta*, that there be *in dubitatus affectus sicut in uxore*, &c. as you may see in *Bartol. ad finem tit. de Concubinis. Mynsinger. ad Instit. de Nuptiis Sect. Aliquando. Gothofred. ad Novel.* 89. *cap.*

cap. 15. The Canon law agrees with the Civil in this matter, as is shown in an Epistle of Pope *Alexander* 3. to the Bishop of *Exceſter* in *Ext. tit. Qui filii ſint legit. c.* 6. *Tanta eſt vis.*

Ad CAP. XL.

24 *Si bonus eſt baſtardus*] yet see *Tiraquell de Nobilitate cap.* 15. *& Pontus Heuterus* his collection touching Baſtards at the end of his *De veteri Belgio*, and you ſhall find, that moſt of the brave ſpirits and able, of the former times, are in the catalogue of famous Baſtards. Remember *Euripides* in his *Andromach.*

† Νόθοι τε, ſαίες ἄν, πόλλοι γνησίων ἀμείνονες. † *Many Baſtards are better than legitimates.*

Ad CAP. XL.

25. *Partus ſemper ſequitur ventrem.*] That is in reſpect of being free or bond. *In liberali cauſa matris non patris inſpicitur conditio, C. tit. de lib. cauſa l.* 28. *avi & l.* 42. *placuit & de rei vendic. l.* 7. *Partum*, where the DD. diſpute this point. But in matter of honor, or, as it were, hereditary office their law is otherwiſe, as you may ſee in *C. tit. de Decurionibus*

onibus l. 22. eos. l. 36. Exemplo l. 44. nullus & tit. de Muritegulis l. 15. qui aut. But the true reaſon was upon this; that where marriage or *jura connubii* could not be, there alwayes *partus ſequebatur ventrem*, in regard no legal father was of ſuch a birth, and the *jura connubii* extended before Chriſtianity receiv'd only to free men. *Ulpian* in his *Tituli, tit. de his, qui in poteſtate ſunt* hath theſe words, which are more worth then all the barbarous Doctors comments. *Connubio interveniente, liberi ſemper patrem ſequuntur; non interveniente connubio, matris conditioni accedunt, excepto eo qui ex peregrino & cive Romana, peregrinus naſcitur: quoniam lex Menſia* (from whom that law is ſo called I remember not) *ex altero parum peregrino natum deteriorie parentis conditionem ſequi jubet. Ex cive Romano & Latina, Latinus naſcitur, & ex libero & ancilla, ſervus, quoniam quem his caſibus connubia non ſunt, partus ſequitur matrem.* For his ſpeech of a *Roman*'s marrying with an *Italian* woman (not a *Roman*) believe it not without examination of ſuch ſtory as you may find collected in *Carol. Sigon. de antiq. jure Civ. Rom. lib. 1. cap. 9.* and others dealing with that ſubject. But clearly its true generally, that where *jura connubii* were not, there the *Roman* law makes the iſſue follow the mother, as the law of nature

ture requires, which the ſame *Ulpian* ſaith alſo *in π. tit. de ſtatu hominum l.* 24. *lex.* in which title *l.* 19. *Celſus* agrees with what we have tranſcribed from *Ulpian*. And the marriages with bond perſons, were always accounted but *contubernia*, and not *connubia*, and they were ſtiled *contubernales*, not *conjuges*, as appears in *π. tit. de legatis* 3. *l.* 41. *uxorem Sect.* 2. *Codicillis, & C. tit de inceſt. nuptiis l.* 3. *cum ancillis.*

25. *Mulieres honore maritorum.*] The text is not voucht out of the true place, it is in *C. tit. de incoliſ. l. fin.* and alſo in *C. tit. de Dignit. l.* 13.

Ad CAP. XLIV.

27. *Proximis de eorum ſanguine.*] The Civil law firſt gave the wardſhip (of males till XIV. of females till XII.) to the *adgnati*, or thoſe *qui per maſculos conjunguntur*, and this was by the laws of the XII. tables, as appeareth *π. tit. de legitimis Tutoribus l.* 1. *Inſtit. de legit. tutelat* But the difference 'twixt *adgnati* and *cognati* both in inheritance, as alſo in wardſhips, *Juſtinian* took away in *Authent.* 118. *cap.* 5. and this is that which is here ſpoken of, and ſo is that law at this day.

28. *Ex parte matris.*] This matter of ſo-

cage wardſhip is grounded upon that ancient ground, held to this day regularly. *Nunquam cuſtodia alicujus de jure alicui remanet de quo habeatur ſuſpicio quod poſſit vel velit aliquod jus in ipſa hæreditate clamare.* *Glanvil* hath it *lib.* 7. *c.* 11. & *Bracton lib.* 2. *c.* 37. *Sect.* 6. which is the ſame in ſubſtance in *Littleton Sect.* 123. and *Breton cap.* 66.

29. *In actibus bellicis.*] For, the ground and cauſe of Knight ſervice wardſhips, was in this, that the Lords of whom the infants held, might bring them up till full age, and inſtruct them in military performances, that ſo they might be better able to do their ſervices by which they held; which becauſe they could not do in their infancy, the profits of the land was, as at this day, taken by the Lords to ſupply the defect of ſervice. Neither is this cuſtome of Wardſhip ſo new, as *Randolf Higden* in his *Polychronicon*, or rather ſome others not underſtanding him, ignorantly make it, by ſuppoſing the beginning of it here under *Hen.* 3. Clearly Wardſhips were before and from the *Normans*, at leaſt. See the *Grand Cuſtumier*, and *Glanvil lib.* 7. *cap.* 9. Neither, if *Higden* himſelf had underſtood thoſe words in his Chronicle which he took out of a former, written by another Monk of *Cheſter*, which I have ſeen, had any authority there been for *Henry*

Henry the thirds beginning them. His words are theſe, *ſub anno* 1224. and 6 *Hen.* 3. *Magnates Angliæ conceſſerunt Regi Henrico Wardas hæredum & terrarum ſuarum quod fuit initium multorum malorum in Anglia.* An old Chronicle in that ineſtimable Library of Sir *Robert Cotton*, written by another of *Higdens* covent, under the ſame year; *Magnates Angliæ reddiderunt Wardas ſuas Regi quod fuit initium malorum.* This Monk knew what he ſaid, and uſed the word *Wardas* chiefly for Forts, Caſtels, Honors, and the like, by which the poſſeſſors preſerved their ſafety in thoſe troubleſome times. For at *Northampton* all ſuch were rendered to the King by the Nobility, upon the exaction of *Hubert de Burgo* chief Juſtice, as both *Matthew Paris*, and *Florilegus* expreſs in theſe words, *reddiderunt ſinguli caſtella, municipia, honores & cuſtodias Regi quæ ad coronam ſuam ſpectare videbantur.* Perhaps *cuſtodiæ* might here comprehend the wardſhip too of ſome heirs: But if ſo, yet they were ſuch as ſome great men poſſeſt by reaſon of ancient tenures, and the King would then have, with the Caſtels, and Fortreſſes by others held, that he might enjoy them with their inheritances, as part of ſecurity againſt the Barons. No ſuch intent is in any of the elder Monks, as ſome would extract out of *Poly-*

chronicon. Neither was that given of Wardſhips to the King, other then as if the Nobility ſhould now give all their Wards to the King; ſuppoſing that the ſtory were chiefly of giving Wardſhips of body and land in the common ſenſe of *Wardæ*, as *Higden* miſreports it. But for the true underſtanding of that in ſtory, take *Rot. Fin. 6 Hen. 3. memb. 4.* where a recital is *proviſum eſt de conſilio Archiepiſcopi Cant. & Epiſcoporum Angliæ & H. de Burgo Juſtitiarii noſtri & Comitum & Baronum noſtrorum quod à die ſci Barnabæ Apoſtoli proximo præterito caperentur in manum noſtram omnia dominica noſtra*, &c. and hereupon writs go into all Shires, to ſeiſe into the Kings hands all ſuch lands, caſtles, forts, mannors, *&c.* But for the antiquity of Wardſhips in *Britain*, both *England* and *Scotland*; See alſo *Hect. Boet. l.* 11. *Buchanan Rer. Scot. l.* 6. *&* 10. *& leges Malcolmi* 2.

Ad CAP. XLVI.

30. *Duodecim denariorum valorem excedat.*] So is it underſtood in the ſtatute of *Weſt.* 1. *cap.* 15. that ſpeaks of Inditement of **petit larceny que n'amount ouſter le value de xii. deniers.** And therewith agrees *Itin. Canc.* 8 *Ed.* 2. *tit.* **Corone** 404. 406. *&* 415. But

But by *Breton cap.* 15. value of xii. d. without more, makes it capital felony. So are alſo opinions in 18 *Aſſiſ. pl.* 14. 22 *Aſſiſ. pl.* 30. See *Stamford lib.* 1. *cap.* 15.

Ad CAP. LXVII.

31. IN *univerſitatibus.*] Indeed the ſtudy of the common law hath not place in our Univerſities of *Oxford* or *Cambridge*, becauſe another Univerſity (the Innes of Courts) is appointed for it. Yet the ſtatutes of the Univerſity of *Cambridge*, *Earum legum* (ſays Doctor *Conell* in his Epiſtle before his *Inſtitutions*, as he calls it, of the laws of England) *quas habet patria noſtra, imperitos nos eſſe prohibent, ut differentias exteri patriique juris ſic cognoſcamus.*

Ad CAP. XLVIII.

32. GALLICA.] Touching this, *Ingulphus* Abbot of *Cromland*, at the conqueſt, thus: *Ipſum etiam idioma* (Normanni) *tantum abhorrebant, quod leges terræ, ſtatutaque Anglicorum regum lingua Gallica tractarent: & pueris etiam in ſcholis principia literarum grammatica gallice, ac non Anglice traderentur, modus etiam ſcribendi Anglicus omitteretur & modus*

modus Gallicus in chartis & in libris omnibus admitteretur. And *Robert Holkot* a learned Dominican Friar in *lect.* XI. *ſuper Sapientiam. Narrant hiſtoriæ quod cum Willielmus Dux Normannorum regnum Angliæ conquiſiviſſet, deliberavit quomodo linguam Saxonicam poſſet deſtruere & Angliam & Normanniam in idiomate concordare, & ideo ordinavit quod nullus in Curia regis placitaret niſi in Gallico, & iterum quod puer quilibet ponendus ad literas addiſceret Gallicam & per Gallicam Latinam, quæ duo uſque hodie obſervantur.* He ſaies the French continued till his time. For he died in the great plague 24 *Ed.* 3. But by ſtatute of 36 *Ed.* 3. *cap.* 15. it was altered, which is the Statute this author ſpeaks of.

Ad CAP. LI.

33. AD *Periſum.*] This *Chaucer* remembers in his Sergeant.

A Sergeant at law ware and wiſe,
That often had been at the Perviſe.

It ſignifies an afternoons exerciſe or Moot, to the inſtruction of young Students, bearing the ſame name originally (I gueſs) with the *Parviſiæ* in *Oxford*, as they call their ſitting Gene-

rals

rals in the schools in the afternoon; which ingenuously I confess, I first learned out of Mr. *Wake* his *Musæ Regnantes pag.* 125. where he divides the *Quodlibets* or *Disputationes Magna*, which are their exercises of Regent-Masters in the forenoon, from *Parva*, that is, Scholars exercise in the afternoon. *Has* (are his words) *quia iis inferiores*, Parvas, *jam etiam corrupto nomine*, Parvisias *dicere consuevimus.*

FINIS.